

United States  
Court of Appeals  
for the Ninth Circuit.

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SAMUEL NELSON, Individually, and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, Suing on His Own Behalf and on  
Behalf of All Other Heirs, Devisees and Lega-  
tees of Olof Zetterlund, Deceased, Similarly  
Situated,

Appellant,

vs.

DORA MILLER and HAROLD M. DAVIDSON,  
Both Individually and as Pretending Co-Execu-  
tors, or Co-Executors de son tort, of the Estate  
of Olof Zetterlund,

Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California  
Central Division.

FILED

JAN - 1 1952



United States  
Court of Appeals  
for the Ninth Circuit.

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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer .....	86
Complaint .....	3

### Exhibits Attached to the Complaint

#### Exhibit No. 1

Notice of Executor.....	21
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#### Exhibit No. 2

Decisions of the Supreme Court of the State of Florida .....	22
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#### Exhibit No. 3

Transcript of Portions of the Record in the Original Administration Proceedings Pending in the County Judge's Court in and for Dade County, Florida, Probate No. 16,650:

Amended Motion to Dismiss Appellees' Petition .....	44
Amended Answer to Petition of Appellees.	47
Answer to the Petition for Revocation of Probate .....	63, 64

## INDEX

## PAGE

## Exhibit No. 3—(Continued)

Circuit Court's Opinion in the State of Florida Affirming Judgment of the County Judge's Court of Dade County..	84
Codicil to Last Will and Testament of Olof Zetterlund .....	35
Defenses to Appellees' Petition.....	38, 50
Defenses of Executor to the Petition for Recovation of Probate and for Ancillary Probate of Will.....	59
Letters Testamentary.....	74
Notice of Appeal to Circuit Court, Assign- ments of Error, and Directions as to Record .....	76
Order Admitting Will.....	30
Order Appointing Samuel Nelson Executor	69
Order Denying Petition of State of Cali- fornia and Finding That Decedent was a Resident of Florida.....	66
Order Requiring Dora Miller and Harold M. Davidson to Deliver Assets.....	79
Petition for Probate of Will.....	25
Petition for Revocation of Probate.....	31
Petition for Revocation of Probate and for Ancillary Probate of Will.....	55
Certificate of Clerk.....	105

INDEX

PAGE

Judgment .....	101
Mandate from Supreme Court.....	99
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	104
Statement of Points.....	107





## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

O'CONNOR & O'CONNOR,  
530 West Sixth St.,  
Los Angeles 14, Calif.

For Appellees:

WILLIAM J. CLARK,  
3935 Huntington Drive,  
East Pasadena 8, Calif.



In the District Court of the United States in and  
for the Southern District of California, Central  
Division

Civil No. 7545-B

SAMUEL NELSON, Individually; and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, Suing on His Own Behalf and on Be-  
half of All Other Heirs, Devisees and Legatees  
of Olof Zetterlund, Deceased, Similarly Situ-  
ated; and as Sole Domiciliary Executor of the  
Estate of Olof Zetterlund, Deceased; and as  
Trustee of an Express Trust,

Plaintiff,

vs.

DORA MILLER and HAROLD M. DAVIDSON,  
Both Individually and as Pretending Co-Execu-  
tors, or Co-Executors De Son Tort, of the  
Estate of Olof Zetterlund, Deceased,

Defendants.

### COMPLAINT

The plaintiff, Samuel Nelson, in the following capacities: (a) individually; (b) as an heir, devisee and legatee of Olof Zetterlund, Deceased, suing on his own behalf and on behalf of all other heirs, devisees and legatees of Olof Zetterlund, Deceased, similarly situated; (c) as sole domiciliary executor of the Estate of Olof Zetterlund, Deceased; (d) and as trustee of an express trust, a copy of [2\*] which is hereto attached, made a part hereof and marked

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

Exhibit 1, by and through his attorneys, O'Connor & O'Connor, 530 West Sixth Street, Los Angeles, California, brings this action against Dora Miller and Harold M. Davidson, in the following capacities: (a) individually; (b) as pretending co-executors of the Estate of Olof Zetterlund, Deceased; (c) and as co-executors de son tort of the Estate of Olof Zetterlund, Deceased.

Plaintiff is an adult, resident and citizen of Essex County, State of New Jersey. Each of the defendants is an adult and resident of Los Angeles County, State of California. Neither of the defendants is in the military or naval service of the United States. The matter in controversy is of a civil nature and exceeds, exclusive of interest and costs, the sum of \$3,000.00.

### First Claim

#### Foreign Judgment

##### 1.

Plaintiff incorporates herein the foregoing introductory paragraph.

##### 2.

Olof Zetterlund died testate in Los Angeles County, California, on August 21, 1945. At the time of his death, Olof Zetterlund was a resident and citizen of and domiciled in Dade County, Florida. The residence, citizenship and domicile of Olof Zetterlund at the time of his death has been adjudicated by the County Judge's Court in and for

Dade County, Florida, a constitutional court having exclusive jurisdiction over the administration of the Estate of decedent, in a proceeding to which each of the defendants [3] personally was a party. (See decisions of the Supreme Court of Florida, the Court of last resort in the State of Florida, listed and cited in Exhibit 2, hereto attached and made a part hereof.) On December 31, 1946, the County Judge's Court of Dade County, Florida, rendered a final judgment adjudicating that Olof Zetterlund was domiciled in the County of Dade, State of Florida, at the time of his death, and was not domiciled in the State of California at the time of his death. Said judgment remains in full force and effect, and was rendered by said Court in proceedings instituted therein by each of the defendants. An exemplified copy of said judgment and antecedent proceedings relating thereto is hereto attached and made a part hereof, marked Exhibit 3 (see pages 105 to 107 thereof).

3.

As it is made to appear from the aforesaid exemplified copy of the record hereto attached and marked Exhibit 3, each of the defendants on October 2, 1945, (pages 68 to 71) submitted their persons and appeared generally in the domiciliary administration proceedings of the Estate of Olof Zetterlund, Deceased, then pending in the County Judge's Court in and for Dade County, Florida, and that at all times subsequent to said October 2, 1945, each of the defendants was personally

amenable and subject to the jurisdiction of said Court.

## 4.

On February 26, 1947, the aforesaid County Judge's Court in and for Dade County, Florida, in the aforesaid proceedings (In re Estate of Olof Zetterlund, Deceased, Probate No. 16,650) in which each of the defendants had appeared personally and submitted themselves to the jurisdiction of the Court, rendered a final judgment against each of the defendants, a copy of [4] which appears in the exemplified record (pages 138 to 141) of Exhibit 3 hereto attached. Said final judgment was rendered after due notice to each of the defendants upon plaintiff's petition (see pages 126 to 134 of Exhibit 3). Upon the rendition of said final judgment, the same was made effective upon service of a copy of the same upon each of the defendants, all of which is more fully shown by said Exhibit 3, pages 142, 143. Said final judgment, rendered on February 26, 1947, remains in full force and effect, and has not been vacated, reversed or modified. The said final judgment remains wholly unpaid and unsatisfied, and neither of the defendants has complied with or performed the terms and conditions of said final judgment.

## 5.

The property of Olof Zetterlund, Deceased, which each of the defendants, by said final judgment rendered February 26, 1947, was directed to pay and deliver to the plaintiff, and was constituted in-



tangible personal property and tangible personal property, the situs of which was never in California, but was in the State of Florida. By and in said final judgment rendered February 26, 1947, it was further adjudicated that each of the defendants had "illegally and wrongfully withdrawn" from several designated New York banks certain funds belonging to the Estate of Olof Zetterlund, Deceased, which should have been delivered to the plaintiff, as domiciliary executor of the Estate of Olof Zetterlund, Deceased.

6.

The aforesaid judgment of February 26, 1947, is one to which this Court and the Courts of California must give full faith and credit under the provisions of Section 1, Article IV, [5] of the Constitution of the United States.

Prayer as to First Claim

Wherefore, plaintiff prays:

(a) That the aforesaid judgment of February 26, 1947, be given full faith and credit, to which it is entitled under the aforesaid provisions of the Constitution of the United States.

(b) That the aforesaid judgment of February 26, 1947, be made a judgment of this Court.

(c) That each of the defendants in their various capacities be required to perform and satisfy each of the provisions of the said judgment dated February 26, 1947, and that the goods, chattels,

lands, tenements and estate of each of the defendants be subjected to the satisfaction of said judgment.

(d) That each of the defendants be adjudged in contempt of Court for their refusal and failure to comply with the terms and provisions of said judgment dated February 26, 1947.

## Second Claim

### Resulting Trust, Together With Alternative Relief Therefor

#### 1.

Plaintiff incorporates herein the foregoing introductory paragraph immediately preceding the First Claim.

#### 2.

Olof Zetterlund was born in Sweden on December 17, 1858, and emigrated to the United States when about twenty-one years of age. He became a citizen of the State of Florida sometime during the latter part of the nineteenth century and acquired large tracts of ocean front land situated in that state, the greater portion of which he owned at the time of his death. [6] Olof Zetterlund died testate on August 21, 1945. Olof Zetterlund died without issue and left no surviving spouse. At the time of his death Olof Zetterlund was a resident and citizen of the State of Florida.

During the year 1927 Olof Zetterlund employed the defendant, Dora Miller, as his housekeeper,



which employment relationship continued thereafter until his death. Dora Miller was over thirty years younger than Olof Zetterlund, and throughout the last years of the life of Olof Zetterlund, she completely dominated and controlled his activities.

## 4.

During the fall of 1941, while Olof Zetterlund was a citizen and resident of the State of Florida, and when Olof Zetterlund was infirm, ill, senile, aged, and physically and mentally incapacitated, the defendant, Dora Miller, persuaded him to go to the State of California with her for a short visit on account of his health. Olof Zetterlund and the defendant, Dora Miller, arrived in the State of California in the fall of 1941. After the arrival Olof Zetterlund and Dora Miller, as aforesaid, in California, the condition of Olof Zetterlund became progressively worse. Olof Zetterlund soon lost his power of locomotion, his power of speech and his ability to write and read. In 1942 Dora Miller, through artifice practiced on Olof Zetterlund, or otherwise, gained complete and exclusive possession and control of the funds and bank accounts of Olof Zetterlund, with full power of withdrawal of the same. At the time Olof Zetterlund thus went to California, he was seized and possessed with large bank accounts in several banks in the City of New York, State of New York, the City of Miami, State of Florida, in Sweden, [7] and elsewhere. Said accounts aggregated approximately \$100,000.00, all of which funds were dissipated by Dora Miller

during the period beginning with the arrival of Olof Zetterlund in California in the fall of 1941.

## 5.

During the latter part of 1943, the defendant, Dora Miller, with the cooperation, assistance and advice of the defendant, Harold M. Davidson, undertook to acquire real and personal property in the name of Dora Miller with funds belonging to Olof Zetterlund, and in the execution of said plan, the defendant, Dora Miller, caused to be procured, delivered and recorded a grant deed, a copy of which is hereto attached, made a part hereof and marked Exhibit 4. Said deed conveyed to the defendant, Dora Miller, an unmarried woman, the following described property situated in Los Angeles County, State of California, to wit:

The Southerly 50 feet of the Northerly 64 feet of Lot 4, Tract 9202, as per map recorded in Book 153, pages 13 and 14 of Maps in the office of the Recorder of said County.

Said property also is known as 525 North Del Mar Avenue, San Gabriel, California. Said deed bears date November 17, 1943, and was recorded on December 2, 1943, in the public records of Los Angeles County, California, in Book No. 20487 of Official Records, at page 157. At the time of the execution of said deed and at all times thereafter, a dwelling house was situated on the property conveyed by said deed, which dwelling house was occupied and used by Olof Zetterlund and Dora Miller continuously until the death of Olof Zetterlund, and there-

after by Dora Miller. At the time of the execution and delivery of said deed, the said dwelling house was unfurnished. Upon the execution and delivery of said deed, Dora Miller, with funds belonging to Olof Zetterlund, [8] elaborately furnished said dwelling house, which furniture and furnishings are still situated in said dwelling house.

## 6.

In the purchase of said property, both real and personal, the title to which was taken in the name of the defendant, Dora Miller, the following funds of Olof Zetterlund were used, to wit:

(a) The defendant, Dora Miller, withdrew the sum of \$5,801.76 of the funds of Olof Zetterlund with the Emigrant Industrial Savings Bank of New York, New York. Said withdrawal was by check bearing date November 13, 1943, and deposited by Dora Miller to her own individual account on November 18, 1943, with the Security-First National Bank of Los Angeles, California, and withdrawn from said bank on the written order of Dora Miller.

(b) The defendant, Dora Miller, withdrew the sum of \$5,000.00 of the funds of Olof Zetterlund with the Greenwich Savings Bank of New York, New York. Said withdrawal was by check bearing date on or about November 15, 1943, and deposited by Dora Miller to her own individual account on November 23, 1943, with the Security-First National Bank of Los Angeles, California, and withdrawn from said bank on the written order of Dora Miller.

(c) The defendant, Dora Miller, withdrew the sum of \$5,297.10 of the funds of Olof Zetterlund with the Seaman's Bank for Savings of New York, New York. Said withdrawal was by check bearing date December 20, 1943, and deposited by Dora Miller in a bank, the identity of which is [9] unknown to plaintiff, and withdrawn on the order of Dora Miller.

(d) The defendant, Dora Miller, withdrew the sum of \$4,908.36 of the funds of Olof Zetterlund with the First Federal Savings & Loan Association of Miami, Florida. Said withdrawal was by check bearing date December 27, 1943, and deposited by Dora Miller to her own individual account on February 11, 1944, with The Security-First National Bank of Los Angeles, California, and withdrawn from said bank on the written order of Dora Miller.

(e) Certain funds of Olof Zetterlund, out of his account with the First National Bank of Miami, Florida, the exact amount being to the plaintiff unknown, were also withdrawn by the defendant, Dora Miller.

## 7.

Upon the execution and delivery of the aforesaid deed, and while the property thereby conveyed was being used by Dora Miller and Olof Zetterlund as a dwelling house, all expenses and the care, management, maintenance and repair of said property was paid by the use of funds of Olof Zetterlund, withdrawn on the written order of Dora Miller, defendant.

## 8.

The aforesaid real and personal property constitutes in equity the property of Olof Zetterlund, now deceased, and therefore, is a part of the estate of Olof Zetterlund, Deceased. The defendant, Dora Miller, has no real, or equitable, or beneficial interest in and to said real property, and holds the legal title thereto in trust for the estate of Olof Zetterlund. The defendant, Dora Miller, wrongfully, illegally [10] and fraudulently claims title and ownership to said property and is now undertaking to sell and dispose of the same and appropriate the proceeds thereof.

## 9.

Plaintiff does not know the exact cost of the said real and personal property, but alleges that the defendant, Dora Miller, appropriated and used all of the aforesaid funds of Olof Zetterlund (comprising the aforesaid four specific items aggregating \$21,007.22, and other funds) in the purchase of the aforesaid real and personal property and its maintenance, repair, payment of taxes, insurance and utilities.

## Prayer as to Second Claim

Wherefore, plaintiff prays:

(a) That a resulting trust be declared in the above-described real and personal property in favor of the estate of Olof Zetterlund, Deceased, and that the defendant, Dora Miller, be decreed to hold the legal title thereto in trust for the plaintiff, and be required to convey said property to the plaintiff, and to account for the reasonable rental and use



value of the said property by her during the entire period beginning with the execution and delivery of said deed and continuously thereafter, or,

(b) In the alternative, as provided by Rule 18, an accounting may be had, and the actual amount of funds of Olof Zetterlund used by the defendant, Dora Miller, in the acquisition of the above-described real and personal property and in the maintenance, operation, repair, utilities, including taxes and insurance and other kindred expenses, be ascertained and determined, and, if the said amount be greater than the value of said property, that the defendant, Dora Miller, be required to repay to the plaintiff said amount of [11] money, together with interest thereon, and that said indebtedness be decreed to be a lien on the above-described property, as well as other assets of the said Dora Miller.

(c) That the defendants be required to pay to the plaintiff all costs, expenses and attorneys' fees incurred or paid by the plaintiff in recapturing the property described in the Second Claim so as to indemnify and save harmless the plaintiff by reason of the wrongful acts of the defendants.

### Third Claim

#### Accounting

##### 1.

Plaintiff incorporates herein the foregoing introductory paragraph immediately preceding the First Claim.

2.

Plaintiff incorporates herein Paragraph 2 of the Second Claim.

3.

Plaintiff incorporates herein Paragraph 3 of the Second Claim.

4.

Plaintiff incorporates herein Paragraph 4 of the Second Claim.

5.

During the eighteen years while the aforesaid employment contract between Olof Zetterlund and Dora Miller was in effect, a fiduciary relationship existed between said persons. During said time Dora Miller pursued a plan of diverting to her own use large sums of money belonging to Olof Zetterlund. During the last four years of the lifetime of Olof Zetterlund, while he was physically and mentally [12] incapacitated, Dora Miller exercised exclusive and complete dominion and control over the affairs of Olof Zetterlund, and during said period Dora Miller appropriated unto herself a large portion of the estate and funds of Olof Zetterlund and dissipated a large portion of the funds and estate of Olof Zetterlund, the exact amount of which is to the plaintiff unknown. Dora Miller, with the cooperation, assistance and advice of Harold M. Davidson, her attorney, has secreted large portions of the funds and estate of Olof Zetterlund and refuses to deliver and pay the same over to the plaintiff.

## Prayer as to Third Claim

Wherefore, plaintiff prays:

(a) That a general and specific accounting be had by each of the defendants of all their acts and doings on behalf of Olof Zetterlund during the lifetime of Olof Zetterlund and since the death of Olof Zetterlund, and that the use of funds and estate of Olof Zetterlund by said defendants be traced. That a money judgment be entered against each of the defendants in an amount equal to the funds and estate of Olof Zetterlund wrongfully appropriated by said defendants and each of them; and that all of the assets and property of each of the defendants acquired by the use of funds or property belonging to Olof Zetterlund be impressed with an equitable lien or trust in favor of the plaintiff, for the use and benefit of the Estate of Olof Zetterlund; and that the defendants, and each of them, be required to pay all costs, expenses and attorneys' fees incurred or paid by the plaintiff in the enforcement and prosecution of this his Third Claim. [13]

## Fourth Claim

## Enforcement of Federal Right

## 1.

Plaintiff incorporates herein the foregoing introductory paragraph immediately preceding the First Claim. Jurisdiction is founded on the existence of a Federal question, and the action also arises under the Constitution of the United States, Article IV,



Section 1, and an act of Congress of the United States, 28 U.S.C.A. 687.

2.

Plaintiff incorporates herein Paragraph 2 of the First Claim.

3.

Plaintiff incorporates herein Paragraph 3 of the First Claim.

4.

As it is made to appear from the aforesaid exemplified copy of the record hereto attached and marked Exhibit 3, the County Judge's Court of Dade County, Florida, a constitutional court with exclusive jurisdiction over the administration of the affairs of a decedent, assumed original domiciliary jurisdiction over the Estate of Olof Zetterlund, deceased, on August 30, 1945. On the succeeding day, August 31, 1945, the defendants, Dora Miller and Harold M. Davidson, sought to invoke the jurisdiction of the Superior Court of Los Angeles County, California, in a domiciliary administration proceedings of the estate of Olof Zetterlund, Deceased, and sought to procure their appointment as co-executors of the Estate of Olof Zetterlund, Deceased, and in an ex parte proceedings the said California Court appointed the defendants as co-executors of the Estate of Olof [14] Zetterlund, Deceased. Said proceedings thus instituted and prosecuted by the defendants in the Superior Court of Los Angeles County, California, was grounded upon the premise that Olof Zetterlund at the time of his death was domiciled in the

State of California, which premise, as herein alleged, was false and without foundation. Thereafter, the defendants and the State of California and its Controller submitted for adjudication to the County Judge's Court in and for Dade County, Florida, as is shown by the exemplified record thereof attached hereto and made a part hereof as Exhibit 3, three issues as follows:

(a) The domicile of Olof Zetterlund at the time of his death,

(b) The validity of a purported codicil (see pages 71 to 73, of Exhibit 3),

(c) The right of the defendants to serve as co-executors of the Estate of Olof Zetterlund, Deceased. Said issues thus presented by the defendants to the County Judge's Court of Dade County, Florida, were regularly made up by appropriate adversary pleadings presented by the parties thereto and duly tried before the said Court. The parties to this cause were parties to said cause. The defendants, together with the State of California and its Controller, not only submitted themselves to the jurisdiction of the said County Judge's Court in and for Dade County, Florida, in said cause, and presented said issues for adjudication, but prosecuted the same to completion, and the said Court adjudicated the same adversely to the defendants and the State of California and its Controller, which adjudication was embraced in the judgment and decree rendered on December 31, 1946 (pages 105 to 107, Exhibit 3), and the judgment and decree of January 17, 1947, (pages 108 to 112 [15])

of Exhibit 3). Thereafter the defendants and the State of California and its Controller prosecuted an appeal (pages 122 to 125 of Exhibit 3), resulting in a decision of affirmance (pages 144 to 151 of Exhibit 3). Thus it is that the aforesaid judgments and decrees, as shown in Exhibit 3 hereto attached, are binding on the defendants and the State of California and its Controller, and said adjudication has effectively concluded the following issues:

(a) Olof Zetterlund at the time of his death was domiciled in the State of Florida and not the State of California.

(b) The aforesaid purported codicil bearing date August 3, 1945, is null and void.

(c) The defendants are not co-executors of the Estate of Olof Zetterlund, Deceased.

(d) The aforesaid proceedings instituted and prosecuted by the defendants in the Superior Court of Los Angeles County, California, are null and void for want of jurisdiction.

5.

Notwithstanding the aforesaid judgments reflected in Exhibit 3 hereto attached, defendants still claim and pretend to claim and hold themselves out to the world as co-executors of the Estate of Olof Zetterlund, Deceased, and are attempting to exercise and are exercising the powers of said office, and are unlawfully, wrongfully and fraudulently interfering and intermeddling with the administration of the Estate of Olof Zetterlund by Samuel Nelson, as sole domiciliary executor thereof.

The defendants while thus pretending to be co-executors of the Estate of Olof Zetterlund, when in truth and in fact they are not, and while attempting to act as co-executors de son tort, have appropriated [16] unto themselves a large amount of the funds belonging to the Estate of Olof Zetterlund, Deceased, which amount exceeds the sum of \$3,000.00, exclusive of interest and costs, the exact amount of which is unknown to plaintiff.

Prayer as to Fourth Claim

Wherefore, plaintiff prays:

(a) That the defendants be enjoined from exercising any functions as co-executors of the Estate of Olof Zetterlund, Deceased.

(b) That an accounting be had and taken as to all actions of the defendants as pretending co-executors of the Estate of Olof Zetterlund, Deceased, or as co-executors de son tort of the Estate of Olof Zetterlund, Deceased.

(c) That the aforesaid proceedings initiated and prosecuted by the defendants in the Superior Court of Los Angeles County, California, be determined to be null and void for want of jurisdiction.

(d) That the defendants be compelled to recognize and give effect to the judgments of the County Judge's Court in and for Dade County, Florida, shown in the exemplified record, Exhibit 3.

O'CONNOR & O'CONNOR,

By /s/ WILLIAM V. O'CONNOR,

Attorneys for Plaintiff. [17]

EXHIBIT No. 1

Know All Men by These Presents,

Whereas, Olof Zetterlund died testate on August 21, 1945, and Samuel Nelson, ever since January 20, 1945, has been and is the duly appointed, qualified and acting domiciliary Executor of the Estate of Olof Zetterlund, Deceased (see In Re: Estate of Olof Zetterlund, Deceased, Probate No. 16,650, in the County Judge's Court in and for Dade County, Florida), and

Whereas, on February 26, 1947, a judgment was rendered by the County Judge's Court of Dade County, Florida, against Dora Miller and Harold M. Davidson in favor of the Estate of Olof Zetterlund, Deceased, which judgment is recorded in Probate Orders, Book 142, page 86, of said Court, and remains in full force and effect, and

Whereas, Dora Miller and Harold M. Davidson have wrongfully appropriated unto themselves large amounts of money and property, both intangible and tangible, belonging to Olof Zetterlund, now deceased, and are fraudulently secreting the same in the State of California.

Now, Therefore, I, Samuel Nelson, as domiciliary Executor of the Estate of Olof Zetterlund, Deceased, do hereby appoint and constitute Samuel Nelson, individually, as Trustee, to institute, maintain and prosecute such actions against Dora Miller and Harold M. Davidson as he may deem advisable, in the United States District Court in the State of California, to collect, receive, recapture and recover



all funds, moneys, property of whatsoever kind belonging to the Estate of Olof Zetterlund, Deceased, or in which Olof Zetterlund was interested at the time of his death, now standing in the name of Dora Miller and Harold M. Davidson, or either of them, directly or indirectly, or in their possession, custody or control, and upon its receipt to account for the same to the domiciliary Executor of the Estate of Olof Zetterlund, Deceased.

In Witness Whereof, I hereunto set my hand and seal in the City of Fort Lauderdale, Broward County, Florida, this the 10th day of June, 1947.

[Seal]     /s/ SAMUEL NELSON,  
Domiciliary Executor of the Estate of Olof Zetterlund, Deceased.

Signed, sealed and delivered in the presence of

/s/ C. A. HIAASEN,

/s/ HELEN WOODRUFF. [18]

## EXHIBIT No. 2

Decisions of the Supreme Court of the  
State of Florida

Pournelle vs. Baxter,  
142 Fla. 517, 195 So. 163,  
Decided March, 1940;  
151 Fla. 32, 9 So. 2. 162,  
Decided July 7, 1942;

Crosby vs. Burleson,

142 Fla. 443, 195 So. 202,

Decided March, 1940;

Tyre vs. Wright,

144 Fla. 90, 197 So. 846,

Decided July, 1940;

State ex rel North vs. Judge Whitehurst,

145 Fla. 559, 1 So. 2. 175,

Decided December, 1940;

In re Niernsee's Estate,

147 Fla. 388, 2 So. 2. 737,

Decided June, 1941;

White vs. Bourne,

151 Fla. 12, 9 So. 2. 170,

Decided July, 1942;

Russ vs. Solomon,

152 Fla. 348, 12 So. 2. 121,

Decided February, 1943,

See previous dismissal of bill, 9 So. 2.  
95, 96;

American Surety Company of New York vs.

Murphy,

151 Fla. 151, 9 So. 2. 355;

Decided July, 1942;

152 Fla. 862, 13 So. 2. 442,

Decided May, 1943;

Wells vs. Menn,

154 Fla. 173, 17 So. 2. 217,

Decided February, 1944;

In re Weltner's Estate,

Ulitzsch vs. Tolton,

154 Fla. 292, 17 So. 2. 396,

Decided March, 1944;

Krivitsky vs. Nye,

155 Fla. 45, 19 So. 2. 563,

Decided October, 1944;

In re Monks' Estate,

Luther vs. Florida Nat. Bank of Jacksonville,

155 Fla. 240, 19 So. 2. 796,

Decided November, 1944;

In re Peters' Estate,

Peters vs. Florida National Bank of Jacksonville,

155 Fla. 453, 20 So. 2. 487,

Decided January, 1945;

Ullendorff vs. Brown,

156 Fla. 655, 24 So. 2. 37,

Decided December 11, 1945. [19]



EXHIBIT No. 3

In the County Judge's Court in and for  
Dade County, Florida

Probate No. 16,650

In Re: Estate of

OLOF ZETTERLUND, Deceased.

TRANSCRIPT OF PORTIONS OF THE REC-  
ORD IN THE ORIGINAL ADMINISTRA-  
TION PROCEEDINGS PENDING IN THE  
COUNTY JUDGE'S COURT IN AND FOR  
DADE COUNTY, FLORIDA

Probate No. 16,650 [20]

\* \* \*

3.

On September 6, 1945, James Q. Burdet filed in this cause his petition for the probate of the Last Will and Testament of Olof Zetterlund, Deceased, bearing date June 9, 1937, which original Last Will and Testament was lodged in this Court, said petition being in the words and figures following:

(Caption and Style Omitted.)

Petition for Probate of Will

To the Honorable W. F. Blanton, Judge of Said  
Court:

Comes now your petitioner, James Q. Burdet, whose residence is 214 6th Street, Miami Beach,

## Exhibit No. 3—(Continued)

Dade County, Florida, and respectfully shows to this Honorable Court.

First: That Olof Zetterlund died at Los Angeles, California, on the 21st day of August, A.D. 1945, and at the time of his death he was a resident of Dade County, Florida, and was approximately eighty-five years of age; and at the time of his death was seized and possessed of a certain estate, situate and being in Dade and Broward Counties, Florida, which to the best of petitioner's knowledge consists of real estate situate in Dade and Broward Counties, Florida, and personal property described as stock in the Elsinore Beach Corporation and the Halland Land Company, all of which are of the approximate value of \$750,000.00.

Second: That the surviving heirs at law of the said decedent known to your petitioner are as set forth in the petition of Ellen W. Burdet, and the Will of the [33] decedent, filed heretofore in this Court.

Third: That said decedent died leaving a last will and testament, dated the 9th day of June, A.D. 1937, which said instrument was published and declared by the said decedent to be his Last Will and Testament, when he, the said decedent, was at least eighteen years of age, in the presence of E. L. Lockhart and P. A. Williams as attesting witnesses and in and by said instrument, a nephew Samuel Nelson of Maplewood, New Jersey, and Arvid Eric-

Exhibit No. 3—(Continued)

son of Cleveland, Ohio, were appointed Executors.

Fourth: That there is a serious question and great difficulty in determining who is legally qualified to act as Executor or Executors under said instrument and your petitioner requests this Honorable Court to appoint an Executor, Executrix or Administrator, C. T. A., in accordance with the laws and interpretations thereof of the State of Florida;

Fifth: Your petitioner further alleges that he has been the business manager of Olof Zetterlund, the deceased, for a number of years and at this time is more familiar with said decedent's estate and the properties involved therein than any other person; that he is the only legal representative of the said decedent in the State of Florida, having been appointed by this Honorable Court as Curator on the 30th day of August, 1945; and to the best of his knowledge and belief there are no heirs of the deceased within the State of Florida and the only beneficiary under the said Will in the State of Florida is Ellen W. Burdet who resides in Miami Beach, [34] Dade County, Florida.

Sixth: Your petitioner further alleges, on information and belief, that a paper writing which has heretofore been presented to this Honorable Court for probate upon the petition of Ellen W. Burdet, which was propounded for probate and record, was and is the Last Will and Testament of said decedent and was properly attested and signed by the said decedent in the presence of witnesses and in the

## Exhibit No. 3—(Continued)

presence of each other, and is the Last Will and Testament of the said decedent.

Seventh: Your petitioner is of the opinion that it is his duty as having been business manager for the decedent personally and business manager of the Halland Land Company, a Florida corporation, and the Elsinore Beach Corporation, a Florida Corporation, being corporations of which the estate now owns approximately 95% of the stock evidenced by stock certificates which are now in the State of Florida and in the possession of your petitioner as curator, and knowing of his own personal knowledge from the desires of the decedent and from information he has obtained that the decedent was a resident of the State of Florida and has at all times considered his domicile within the State of Florida and that for the benefit of the estate the Will should be probated within the State of Florida;

Wherefore, your petitioner prays that the said paper writing heretofore propounded for probate in that certain petition filed by Ellen W. Burdet, be admitted to probate and record as and for the Last Will [35] and Testament of the said decedent and that this Honorable Court appoint the Executors named in the said instrument as Executors of the said estate if and provided they can qualify as such and that in the event the said Executors named in the Will cannot serve, then this Honorable Court appoint an Administrator or Administrators,

Exhibit No. 3—(Continued)

C. T. A., in accordance with the laws of the State of Florida.

And Your Petitioner Will Ever Pray, etc.

/s/ JAMES Q. BURDET.

/s/ GLYNN O. RASCO,  
Attorney for Petitioner.

State of Florida,  
County of Dade—ss.

The above-named James Q. Burdet, being by me duly sworn, says that the foregoing petition by him subscribed is true.

[Seal] /s/ L. B. SUTHERLAND,  
Notary Public, State of  
Florida at Large.

My commission expires Feb. 17, 1947. [36]

4.

On September 6, 1945, consequent upon said petition filed September 6, 1945, the Judge of this Court made and entered his order admitting to probate the Last Will and Testament of Olof Zetterlund, Deceased, bearing date June 9, 1937, which order was recorded in Book of Wills, Volume 122, page 32, being in the words and figures following:

(Caption and Style omitted.)



## Exhibit No. 3—(Continued)

## Order Admitting Will

By the County Judge of Said County:

The instrument presented by Glynn O. Rasco, attorney, as and for the Last Will and Testament of Olof Zetterlund, deceased, having been duly established by the sworn testimony of E. L. Lockhart, subscribing and attesting witnesses thereto, as being the true last Will and Testament of the said decedent and no objection being made to the probate thereof, and it having been made to appear to the County Judge of said County by due proof that the said decedent died on the 21st day of August, A.D. 1945,

It is therefore ordered, adjudged and decreed that the said Last Will and Testament, bearing date the 9th day of June, A.D. 1937, and attested by E. L. Lockhart and P. A. Williams, as subscribing and attesting witnesses thereto be, and the same is hereby admitted to probate according to law, as and for the true Last Will and Testament of said decedent, and that the said Will, [37] together with the petitions filed by Ellen W. Burdet, a legatee mentioned in said instrument, and James Q. Burdet, heretofore appointed Curator for said decedent's estate by this court, be duly recorded in the Book of Wills, and that the cost of recording same be taxed as costs against the estate.

(The following is a penned notation.)

That the appointment of a personal repre-

Exhibit No. 3—(Continued)

sentative of said estate be held in abeyance until the further order of court.

WFB

Given under my hand and seal at Miami, in said County and State, this 6th day of September, A.D. 1945.

[Seal]     /s/ W. F. BLANTON,  
County Judge. [38]

\* \* \*

8.

On October 2, 1945, Dora Miller and Harold M. Davidson filed in this cause their petition for revocation of probate, the same being in words and figures as follows:

(Caption and Style Omitted.)

Petition for Revocation of Probate

To the Honorable W. F. Blanton, Judge of the  
County Judge's Court, Dade County, Florida:

The petition of Dora Miller and Harold M. Davidson respectfully shows unto this Court as follows:

1. That the petitioner Dora Miller is legatee under the Last Will and Testament of the said Olof Zetterlund, deceased, and that the petitioners Dora Miller and Harold M. Davidson are Co-Executors of the Codicil to the Last Will and Testament of said Olof Zetterlund, deceased.

## Exhibit No. 3—(Continued)

2. That an instrument alleged to be the Last Will and Testament of the said Olof Zetterlund, deceased, was admitted to probate by Your Honor on the 6th day of September, 1945, without notice to petitioners, and that your petitioners, being dissatisfied with the probate of said Will, now file this petition for revocation of probate thereof.

3. That the said Olof Zetterlund was a resident of the City of San Gabriel, County of Los Angeles, State of California, at the time of his death on August 21, 1945, and for some time prior thereto and was not a resident [94] of the State of Florida at the time of his death nor for some years prior thereto. Therefore, this Honorable Court does not have jurisdiction of said estate.

4. That the instrument probated as the Last Will and Testament of said Olof Zetterlund, deceased, is not the complete Last Will and Testament of the said Olof Zetterlund, deceased. That the said Zetterlund did on the 3d day of August, 1945, make, declare and publish a Codicil to his said original will dated June 9, 1937, in and by which Codicil he declared himself to be a resident of the County of Los Angeles, State of California.

5. That the said Codicil with a copy of the Will attached was filed for probate in the Superior Court of the State of California in and for the County of Los Angeles on August 31, A. D. 1945, and that the same was admitted to probate by order of said



Exhibit No. 3—(Continued)

Court on the 28th day of September, A.D. 1945. An exemplified copy of said proceedings in the Superior Court of the State of California in and for the County of Los Angeles, including: A petition for Probate of the Codicil of said Will, a copy of the original Will of the said Olof Zetterlund bearing date June 9, 1937, a copy of the Codicil to the Last Will and Testament of the said Olof Zetterlund dated the 3rd day of August, 1945, the order admitting the Codicil to Probate and for Letters Testamentary signed on September 28, 1945, and Letters Testamentary appointing Dora Miller and Harold M. Davidson as Co-Executors, dated September 28, 1945, is hereto attached, marked Exhibit "A" and made a part hereof. [95]

6. That Dora Miller and Harold M. Davidson, the duly appointed Co-Executors of the Estate of Olof Zetterlund, deceased, under said Codicil, are duly qualified and authorized to file this petition and to take such other steps as may be necessary herein.

Wherefore, Petitioners pray:

1. That the said Order Admitting the instrument alleged to be the Last Will and Testament of Olof Zetterlund, deceased, entered September 6, 1945, by this Court be revoked.

2. This this Court declare the residence of the said Olof Zetterlund at the time of his death to be in Los Angeles County, State of California.

## Exhibit No. 3—(Continued)

3. That this Court admit the exemplified Codicil to the Last Will and Testament of Olof Zetterlund with the Will annexed, for probate and ancillary proceedings in this Court.

4. That petitioners be appointed Ancillary Executors of the Last Will and Testament and the Codicil thereof of said Olof Zetterlund, deceased, and, in the alternative, if the Court finds petitioners disqualified, that he appoint some suitable person as Ancillary Executor of the exemplified copy of the Codicil with the Will annexed of the said Olof Zetterlund, deceased.

/s/ J. C. SULLIVAN,  
Atty. for Petitioners.

State of Florida,  
County of Dade—ss.

Personally this day appeared before me, the undersigned authority, Harold M. Davidson, who, being first duly sworn, deposes and says that he is one of the petitioners [96] in the above and foregoing petition; that he has read said petition, knows the contents thereof, and that the same are true to the best of his knowledge and belief.

/s/ HAROLD M. DAVIDSON.

Exhibit No. 3—(Continued)

Sworn to and Subscribed before me this 2nd day of October, A.D. 1945.

[Seal]      /s/ HELEN ECKHOFF,  
Notary Public, State of  
Florida at Large.

My commission expires 5/26/47.

Exhibit "A," referred to in the foregoing petition, is omitted from this transcript, except a copy of the purported Codicil of Olof Zetterlund bearing date August 3, 1945, which is as follows:

Codicil to Last Will and Testament  
of Olof Zetterlund

I, Olof Zetterlund, a citizen of the city of San Gabriel, County of Los Angeles, State of California, being of sound mind and memory, do hereby declare this to be a Codicil to my last Will and Testament, made and executed by me on the 9th day of June, 1937, in the following manner:

First: I hereby re-affirm and re-allege each and every allegation and paragraph in my former Will, except Paragraph 21 and Paragraph 22 thereof. Inasmuch as I am now a resident of the County of Los Angeles, State of California, I wish to nominate and appoint local co-executors. I hereby delete Paragraph 21 from my former Will, and in place thereof make a new Paragraph 21, reading as follows: [97]

## Exhibit No. 3—(Continued)

Lastly, inasmuch as I am now a resident of Los Angeles County, California, I hereby nominate, constitute and appoint Dora Miller of San Gabriel, California, and Harold M. Davidson, of Alhambra, California, as co-executors of my Last Will and Testament, and direct and authorize that they serve without bond, and it is my desire that the co-executors shall not sacrifice too much of the value of my estate unless in their opinion, it shall be absolutely necessary to do so in order to properly probate my will.

Second: I hereby delete from my former Will, Paragraph 22 wherein I gave and bequeathed to Samuel Nelson and Arvid Ericson, whom I had named as executors of that Will, \$1,000.00 each for their work as executors. It is my intention and desire that the newly named and appointed co-executors, Dora Miller and Harold M. Davidson, shall receive as remuneration for their services as my co-executors, such sum as the State of California provides shall be paid to the co-executors of my Last Will and Testament, and said sum paid for the services of co-executors shall be that set forth in the California statutes.

Third: I wish to add one additional paragraph to my Will, being Paragraph 25, reading as follows:

If any person or persons other than those named in this document shall prove themselves to be my legal heir and entitled to take any portion of my estate, to such person or persons, individually, I give the sum of One Dollar (\$1.00) only. [98]

Exhibit No. 3—(Continued)

Fourth: No other portion or paragraph of my Will is changed or altered in any manner whatsoever except as herein set forth as to Paragraph Twenty-First and Paragraph Twenty-Second of my Will of June 9, 1937, and the addition of Paragraph Twenty-Fifth.

In Witness Whereof, I have hereunto set my hand this 3rd day of August, 1945.

/s/ OLOF ZETTERLUND.

The above instrument was, at the day thereof, signed, sealed, published and declared, by the said Olof Zetterlund, as and for a Codicil to his Will, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses thereof.

/s/ PEARL SINDELAR,  
Of Los Angeles.

/s/ CHARLES SINDELAR,  
Of Los Angeles. [99]

8-A.

Citation was duly issued, published and served on the petition of Dora Miller and Harold M. Davidson, filed as aforesaid on October 2, 1945, and thereafter, on October 11, 1945, Samuel Nelson, Constance Nelson Ericson and Arvid Ericson filed their joint and several defenses to said petition of Dora

## Exhibit No. 3—(Continued)

Miller and Harold M. Davidson, the same being in words and figures following:

(Caption and Style Omitted.)

Defenses to Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and Filed October 2, 1945

Now come Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, jointly and severally, the same being "interested persons and persons interested in the estate" of Olof Zetterlund, deceased, and for defenses to the petition of Dora Miller and Harold M. Davidson for revocation of probate, presented and filed October 2, 1945, severally say:

(1) They deny that Dora Miller and Harold M. Davidson are co-executors of the Estate of Olof Zetterlund, deceased.

(2) They admit that the Last Will and Testament of Olof Zetterlund, bearing date June 9, 1937, was admitted to probate by order of this Court rendered on September 6, 1945. They deny the other averments of Paragraph 2 of said petition. [100]

(3) They deny that Olof Zetterlund was a resident of the City of San Gabriel, County of Los Angeles, State of California, at the time of his death on August 21, 1945. They say that Olof Zetterlund was a resident and citizen of the State of Florida at the time of his death on August 21, 1945.



Exhibit No. 3—(Continued)

(4) The Last Will and Testament of Olof Zetterlund, bearing date June 9, 1937, admitted to probate on September 6, 1945, constitutes the complete Last Will and Testament of said decedent. They deny that the said Olof Zetterlund made a Codicil on August 3, 1945.

(5) They say that the purported Codicil of August 3, 1945, and the proceedings had thereon, as described in Paragraph 5 of said petition, is a nullity and of no effect for that:

(a) The said Olof Zetterlund was not a resident of, nor domiciled in the State of California, at the time of his death.

(b) The said Codicil bearing date August 3, 1945, is spurious and not genuine.

(c) The said Codicil bearing date August 3, 1945, was made at the time when the said Olof Zetterlund did not possess testamentary capacity and was not of sound mind.

(d) The said Codicil bearing date August 3, 1945, was procured by the said Dora Miller and Harold M. Davidson through fraud, or duress, or mistake, or menace, or undue influence, and hence is null and void. [101]

(e) The proceedings in the Superior Court of the State of California, in and for the County of Los Angeles, described in Paragraph 5 of said petition, were had and conducted in the same Court in which the said Dora Miller and Harold M. Davidson instituted and prosecuted the following proceedings, to wit: On May 17, 1945, the said Dora Miller,

## Exhibit No. 3—(Continued)

by and through the said Harold M. Davidson as her attorney, filed in said Court a petition for the appointment of a guardian of the person and estate of Olof Zetterlund, in which petition the said Dora Miller, under oath, alleged that the said Olof Zetterlund, then living, was incompetent and incapable of "caring for and managing his properties and his estate." Said petition was submitted to the Judge of said Court on May 23, 1945, together with medical proof that said Olof Zetterlund at said time was suffering from chronic senility. That the said Olof Zetterlund at said time was 85 years of age. Upon said petition and proof, the Judge of said Court, on May 23, 1945, entered an order adjudicating Olof Zetterlund incompetent and incapable of taking care of himself and managing his property, which order remained in full force and effect continuously thereafter until the time of the death of Olof Zetterlund. At the time of the making of said Codicil on August 3, 1945, the said Olof Zetterlund was under the disabilities of incompetency adjudicated by said Court upon the petition of the said Dora Miller and Harold M. [102] Davidson. That by virtue of said proceedings had and conducted in the State of California, by Dora Miller and Harold M. Davidson, they are now precluded and estopped from asserting that Olof Zetterlund possessed testamentary capacity on August 3, 1945, the date of the making of the purported Codicil. An exemplified copy of said incom-

Exhibit No. 3—(Continued)

petency proceedings is hereto attached and made a part hereof.

(f) The proceedings described in Paragraph 5 of said petition were had and taken in a Court which was wholly without jurisdiction over the Estate of Olof Zetterlund, Deceased.

(6) They deny that Dora Miller and Harold M. Davidson are the duly appointed co-executors of the Estate of Olof Zetterlund, deceased, under said Codicil.

(7) It is true that at the time of the death of Olof Zetterlund, on August 21, 1945, and for some time prior thereto, the said Dora Miller was his household servant or employee. That during said employment period and for several years preceding his death, the said Olof Zetterlund was infirm, senile, ill and incompetent. That during this period and while the said Olof Zetterlund was under the aforesaid disabilities, the said Dora Miller, with the actual knowledge, consent and acquiescence of the said Harold M. Davidson, her attorney, took advantage of the said Olof Zetterlund and wrongfully and unlawfully appropriated unto herself large sums of money and property of the said Olof Zetterlund and invested funds belonging to said Olof Zetterlund in real and personal property, and [103] took title thereto in the individual name of Dora Miller or other nominees. The exact amount of such wrongful and illegal appropriation of the funds and property of Olof Zetterlund by Dora

## Exhibit No. 3—(Continued)

Miller is to the undersigned unknown. That the making of the aforesaid purported Codicil on August 3, 1945, by Olof Zetterlund, was at the instance and direction of Dora Miller and Harold M. Davidson, pursuant to a design and scheme on their part to gain control over all the assets of Olof Zetterlund, deceased, and was made at the time when Olof Zetterlund was on his deathbed and wholly without testamentary capacity.

(8) At the time of the making of the purported Codicil on August 3, 1945, the said Olof Zetterlund was not of sound mind, and was wholly without testamentary capacity, and that by reason thereof the said purported Codicil is null and void.

McCUNE, HIAASEN &  
FLEMING,

Broward Bank & Trust Building, Fort Lauderdale,  
Florida.

By /s/ C. A. HIAASEN,  
Attorneys for Samuel Nelson, Constance Nelson  
Ericson and Arvid Ericson.

State of Florida,  
County of Broward.

Before me, the undersigned authority, personally appeared C. A. Hiaasen, who being first duly sworn, says that he is of counsel for the above Samuel Nelson, Constance Nelson Ericson and Arvid Ericson; that on the 9th day of October, 1945, he did

Exhibit No. 3—(Continued)

mail a true and complete copy of the foregoing defenses to Mr. John C. Sullivan, Attorney at Law, Ingraham Building, Miami 32, Florida, who is the attorney of record for Dora Miller and Harold M. Davidson. [104]

/s/ C. A. HIAASEN.

Subscribed and sworn to before me this 9th day of October, 1945.

[Seal]      /s/ HELEN WOODRUFF,  
Notary Public, State of  
Florida at Large.

My commission expires 2-13-46.

8-B.

There was attached to the foregoing defenses and made a part thereof an exemplified copy of the California incompetency proceedings of Olof Zetterlund, now deceased, described in said defenses, the same being a record of the proceedings had in the Superior Court of the State of California, in and for the County of Los Angeles, entitled: "In the Matter of the Guardianship of the Person and Estate of Olof Zetterlund, an Incompetent Person, No. 243553," which transcript of proceedings is not included herein. [105]

8-C.

On November 19, 1945, J. M. Lee, Comptroller of the State of Florida, as Commissioner of Reve-



## Exhibit No. 3—(Continued)

nue of the State of Florida, filed his "Amended Motion to Dismiss Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and filed October 2, 1945," being in words and figures following:

(Caption and Style Omitted.)

Amended Motion to Dismiss Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and Filed October 2, 1945

Comes now J. M. Lee, Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida, by his attorney undersigned, and respectfully sheweth unto the Court:

## 1.

That under and by virtue of the statutes of Florida, he is charged with the administration and the collection of taxes against estates of decedents and as such is vitally interested in the determination of the domicile of the decedent, Olof Zetterlund.

## 2.

Wherefore, the court is respectfully requested to consider the following:

Amended Motion to Dismiss

On behalf of the State of Florida, as represented by the Comptroller, J. M. Lee, in his capacity as Commissioner of Revenue, and as grounds for the Motion to [106] Dismiss, going to each and every



Exhibit No. 3—(Continued)

portion of the petition of Dora Miller and Harold M. Davidson for Revocation of Probate, which seeks to place the domicile of Olof Zetterlund in California, your movant sets up the following:

(a) That the aforesaid petition shows upon its face that Olof Zetterlund was at all times prior to and up to the time of his death domiciled in the State of Florida.

(b) That said petition shows upon its face that it is a studied attempt to deprive the State of Florida of jurisdiction of this estate by a purported change in domicile which is not borne out by any facts alleged in said petition.

J. M. LEE,

Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida.

By /s/ LEWIS H. TRIBBLE,

His Attorney.

State of Florida,  
County of Leon.

Before me, the undersigned authority, personally appeared Lewis H. Tribble, who being first duly sworn says that he is counsel for the above J. M. Lee, Comptroller of the State of Florida, and that on the 17th day of November, 1945, he did mail a true and complete copy of the foregoing Amended Motion to Dismiss to:

Mr. Ernest A. Eklund, Attorney at Law,  
33 South Clark Street, Chicago, Illinois; and

## Exhibit No. 3—(Continued)

Mr. Glynn O. Rasco, Attorney at Law, 835 Lincoln Road, Miami Beach, Florida, [107] who are attorneys of record for Karin Zetterlund; and

McCune, Hiaasen and Fleming, Attorneys, Broward Bank and Trust Building, Ft. Lauderdale, Florida, who are attorneys for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson; and

Mr. John C. Sullivan, Attorney, Ingraham Building, Miami, Florida, who is attorney for Dora Miller and Harold M. Davidson.

/s/ LEWIS H. TRIBBLE.

Sworn to and subscribed before me this 17th day of November, 1945.

[Seal]     /s/ LOIS LANG,  
Notary Public. [108]

## 8-D.

On November 19, 1945, J. M. Lee, Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida, filed his "Amended Answer to Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and Filed October 2, 1945," being in words and figures following:

(Caption and Style Omitted.)

Exhibit No. 3—(Continued)

Amended Answer to Petition of Dora Miller and  
Harold M. Davidson for Revocation of Probate,  
Presented and Filed October 2, 1945

Comes now J. M. Lee, Comptroller of the State  
of Florida, as Commissioner of Revenue of the  
State of Florida, by his attorney undersigned, and  
respectfully sheweth unto the court:

1.

That under and by virtue of the statutes of  
Florida he is charged with the administration and  
the collection of taxes against estates of decedents  
and as such is vitally interested in the determina-  
tion of the domicile of the decedent, Olof Zetterlund.

2.

Wherefore the court is respectfully requested to  
permit the filing of the following:

Amended Answer to Petition

On behalf of the State of Florida, as represented  
by the Comptroller, J. M. Lee, in his capacity as  
Commissioner of Revenue, and answering the afore-  
said [109] petition, avers the following:

(a) He admits that the last will and testament  
of Olof Zetterlund bearing date of June 9, 1937,  
was admitted to probate by order of this court  
rendered on September 6, 1945.

(b) He denies that Olof Zetterlund was a resi-  
dent of the city of San Gabriel, County of Los

## Exhibit No. 3—(Continued)

Angeles, State of California, at the time of his death on August 21, 1945, and on the contrary says that Olof Zetterlund was a resident and citizen of the State of Florida, on August 21, 1945.

(c) He denies any and every averment in said petition with respect to the domicile of Olof Zetterlund being in the State of California at the time of his death.

(d) He alleges affirmatively that at the time the said Olof Zetterlund was transported to the State of California by Dora Miller, his housekeeper and nures, he was over 80 years of age and in his dotage, without mental capacity sufficient to have the intent to change his domicile.

(e) That for many years prior to and at the time of his death, he reported to the tax assessing authorities of the State of Florida, the amount of his intangible tax for the purpose of paying same as a resident of Florida, and filed his annual income tax return with the Federal Government in the Jacksonville, Florida, office.

(f) That prior to the date of the purported codicil, [110] the validity of which is hereby denied, proceedings were brought by Dora Miller, the decedent's housekeeper and nurse, represented by Harold M. Davidson, for the appointment of a guardian in California, upon the grounds that he was incapable of handling his own affairs and that in these proceedings evidence was submitted which was sufficient to satisfy the court that the said Olof Zetterlund was so old, aged, infirm and childish as

## Exhibit No. 3—(Continued)

to be incapable of conserving his estate. Whereupon, the aforesaid Dora Miller, represented by Harold M. Davidson, was appointed guardian. Thereaftter, the aforesaid Dora Miller and Harold M. Davidson, taking advantage of the condition set up and established by said guardianship proceeding, and with the intent to deprive the State of Florida of the right to have the administration of this estate within its borders, did cause to be placed in said purported codicil a statement that the domicile of the decedent was in California.

J. M. LEE,

Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida.

By /s/ LEWIS H. TRIBBLE,  
His Attorney.

State of Florida,  
County of Leon.

Before me, the undersigned authority, personally appeared Lewis H. Tribble, who being first duly sworn says that he is counsel for the above J. M. Lee, Comptroller of the State of Florida, and that on the 17th day of November, 1945, he did mail a true and complete copy of the foregoing Amended Answer to Petition to: [111]

Mr. Ernest A. Eklund, Attorney at Law,  
33 South Clark Street, Chicago, Illinois; and

Mr. Glynn O. Rasco, Attorney at Law, 835  
Lincoln Road, Miami Beach, Florida, who are



## Exhibit No. 3—(Continued)

attorneys of record for Karin Zetterlund; and McCune, Hiaasen and Fleming, Attorneys, Broward Bank and Trust Building, Ft. Lauderdale, Florida, who are attorneys for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson; and

Mr. John C. Sullivan, Ingraham Building, Miami, Florida, who is attorney for Dora Miller and Harold M. Davidson.

/s/ LEWIS H. TRIBBLE.

Sworn to and Subscribed before me this 17th day of November, 1945.

[Seal]      /s/ LOIS LANG,  
Notary Public. [112]

## 8-E

On November 21, 1945, the interested persons hereinafter named, filed their defenses to the petition of Dora Miller and Harold M. Davidson, for revocation of probate presented and filed October 2, 1945, being in words and figures following:

(Caption and Style Omitted.)

Defenses to the Petition of Dora Miller and Harold M. Davidson for Revocation of Probate Presented and Filed October 2, 1945

In response to the citation dated October 11, 1945, returnable on or before November 22, 1945, issued consequent upon the "Petition for Revocation of



Exhibit No. 3—(Continued)

Probate" filed by Dora Miller and Harold M. Davidson on October 2, 1945, the undersigned, all of whom are the devisees, legatees and beneficiaries under the Last Will and Testament of Olof Zetterlund bearing date June 9, 1937, and therefore interested in said estate, jointly and severally file these defenses addressed to the "Petition for Revocation of Probate," filed by Dora Miller and Harold M. Davidson on October 2, 1945, and jointly and severally say:

(1) The undersigned do hereby jointly and severally adopt as their own the written "Defenses to Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and filed October 2, 1945," filed jointly and severally on October 11, 1945, by Samuel Nelson, Constance Nelson Ericson and Arvid Ericson. [113]

(2) The undersigned do hereby jointly and severally appoint, designate and name as their attorneys and agents the law firm of McCune, Hiaasen & Fleming, whose specific address is Broward Bank & Trust Building, Fort Lauderdale, Florida.

(3) The names and specific addresses of the persons on whose behalf this pleading is made and filed, all of whom constitute devisees and legatees under the Last Will and Testament of Olof Zetterlund, deceased, are as follows:

(a) The following, all of whom are children of Johannes Zetterlund, now deceased, a brother of

## Exhibit No. 3—(Continued)

Olof Zetterlund, and who are specifically named in the 16th paragraph of said Last Will and Testament:

David E. Zetterlund, Edgrensgatan 9, Arvika, Sweden.

Mrs. Hulda Zetterlund Anderson, Algarden, Arvika, Sweden.

Mrs. Signe Zetterlund Anderson, Kyrkogatan 26, Arvika, Sweden.

Gustaf Zetterlund, Horngatan 9, Arvika, Sweden.

Carl Zetterlund, Vansbro, Sweden.

(b) The following, all of whom are children of Britta Zetterlund Rensta, now deceased, a sister of Olof Zetterlund, deceased, and who are specifically named in the 17th paragraph of said Last Will and Testament: [114]

Ruth Rensta, also known as Rut Rensta, Dottevik, Arvika, Sweden.

Naemi Rensta, also known as Rebecka Naemi Rensta, Dottevik, Arvika, Sweden.

Hanna Rensta, Dottevik, Arvika, Sweden.

Mrs. Sara Elizabet Rensta Wallin Tyska, Fallet, Strasso, Sweden.

Gustaf Rensta, 207-A Lakeshore Road, Woodlands, Quebec, Canada, and c/o Canadian Pacific Airlines, 1011 Confederation Building, Montreal, Québec, Canada.

Ernfrid E. Rensta, also known as Enfrid E. Rensta, 3409 J Street, Sacramento 16, California.

Exhibit No. 3—(Continued)

(c) The following, all of whom are children of Kajsa Zetterlund Nelson, now deceased, a sister of Olof Zetterlund, deceased, and who are specifically named in the 18th paragraph of said Last Will and Testament:

Samuel Nelson, 2 Burnet Street, Maplewood, New Jersey.

Mrs. Hannah Elizabeth Nelson Wiren, also known as Mrs. Hanna Elizabeth Nelson Wiren, East Orange, New Jersey.

Mrs. Ester Maria Nelson Olofson, Madison, New Jersey.

Mrs. Constance Nelson Ericson, 13400 Shaker Boulevard, Cleveland, Ohio.

Lydia Caroline Nelson Bergen, Brooklyn, New York.

(d) The following, all whom are children of Eric Zetterlund, now deceased, a brother of Olof Zetterlund, deceased, and who are specifically named in the 19th [115] paragraph of said Last Will and Testament:

Mrs. Hulda Zetterlund Olsson, Takene, Brunsberg, Sweden.

Mrs. Maria Zetterlund Backlund, Skog, Brunsberg, Sweden.

Paul Eriksson Zetterlund, Lerhol, Edane, Sweden.

(e) These defenses are also being filed on behalf of

Mrs. Maria Zetterlund Anderson, N 60 Charottenberg, Sweden,

## Exhibit No. 3—(Continued)

a daughter of Johannes Zetterlund, now deceased,  
a brother of Olof Zetterlund, deceased.

(4) That all the persons on whose behalf this pleading is filed urge and request the Court to appoint Samuel Nelson as sole executor of the Last Will and Testament of Olof Zetterlund, deceased.

McCUNE, HIAASEN &  
FLEMING,

By /s/ C. A. HIAASEN,

Attorneys for the Above  
Persons Specifically Named.

State of Florida,  
County of Broward.

Personally before me, the undersigned authority, appeared Martha Brooks, who, upon oath, says that she is a stenographer employed in the law offices of McCune, Hiaasen & Fleming, attorneys for the persons specifically named in the foregoing defenses, and in [116] pursuance of her duties as such she, on the 21st day of November, 1945, did mail to Mr. John C. Sullivan, attorney of record for Dora Miller and Harold M. Davidson in this cause, a true and complete copy of the above and foregoing defenses enclosed in an envelope bearing the requisition amount of United States uncanceled postage stamps, addressed as follows:

Mr. John C. Sullivan, Attorney at Law,  
Ingraham Building, Miami, Florida,

Exhibit No. 3—(Continued)

by depositing each of said envelopes, properly sealed, stamped and addressed as aforesaid, in a receptacle provided by the United States Postal Department in the City of Fort Lauderdale, Florida, for the receipt of outgoing mail; and that the address on said envelope is the usual post office address of the said attorney. All on the 21st day of November, 1945.

/s/ MARTHA BROOKS.

Subscribed and sworn to before me this 21st day of November, 1945.

[Seal]     /s/ HELEN WOODRUFF,  
Notary Public, State of  
Florida at Large.

My commission expires February 13, 1946. [117]

9.

On January 24, 1946, the State of California, by and through its Controller, Harry B. Riley, filed its petition for revocation of probate and for ancillary probate of will of Olof Zetterlund, being in words and figures following:

(Caption and Style Omitted.)

Petition for Revocation of Probate and for Ancillary Probate of Will of Olof Zetterlund

The petition of the state of California, by and through its Controller, Harry B. Riley, respectfully shows:



## Exhibit No. 3—(Continued)

## I.

That Olof Zetterlund died on August 21, 1945, and at the time of his death he was a resident and citizen of the state of California, residing in San Gabriel, county of Los Angeles, state of California.

## II.

Formerly the said deceased was a resident of the state of Florida, and, while residing in Florida, he executed his last will and testament on June 9, 1937, and thereafter he removed to the state of California. On the third day of August, 1946, he made a codicil to his original will, in which he declared himself to be a resident of the state of California; said original codicil and a copy of said will were filed for probate in Los Angeles County, California, on August 31, 1945, and said codicil was admitted to probate in [118] said Los Angeles County, California, on September 28, 1945. A supplemental order was entered in said court on November 15, 1945, admitting said will to probate.

## III.

In the meantime, James Q. Burdet, who is not related to the deceased but who had obtained possession of said original will, filed it in the Probate Court of Dade County, Florida, and, on September 6, 1945, he filed in said Probate Court a petition to probate said will, alleging that the deceased was a citizen of Dade County, Florida. The Honorable W. F. Blanton, Judge of said Probate Court,



## Exhibit No. 3—(Continued)

admitted the will to probate on September 6, 1945, and held the appointment of a personal representative in abeyance until further order of the court. This order of probate does not state whether the deceased is a citizen or resident of Florida or not, and petitioner alleges that the deceased was not a citizen or resident of Florida at the time of his death, and that said original will should have been probated in California. The codicil to said will above mentioned has not been offered for original probate in Dade County, Florida.

## IV.

Said probate in Dade County, Florida, was entered without notice to petitioner or to anyone else, and petitioner alleges that said probate should be revoked as an original probate and that said will should be probated in Dade County, Florida, in ancillary proceedings. An exemplified copy of the probate [119] proceedings in the Superior Court of the state of California, in and for the county of Los Angeles, showing the petition for the probate of said will and codicil, a copy of the original will, a copy of the codicil to said will, the orders admitting the codicil and will to probate, and a copy of the letters testamentary appointing Dora Miller and Harold M. Davidson as co-executors of said will, is now on file in the office of the County Judge of Dade County, Florida, and the same is hereby made a part of this petition by reference.

Wherefore, petitioner prays that the order of

## Exhibit No. 3—(Continued)

the County Judge of Dade County, Florida, admitting the said original will of the deceased to original probate in Florida, dated September 6, 1945, be set aside and revoked; that, thereupon, said will and the codicil mentioned herein be admitted to probate in Dade County, Florida, in ancillary proceedings, and ancillary personal representatives be appointed by this honorable court; that this honorable court declare the residence and citizenship of the said Olof Zetterlund at the time of his death to have been in Los Angeles County, State of California, and that such other and further relief be granted to your petitioner as to this court may seem proper.

REDFEARN & FERRELL,

By /s/ D. H. REDFEARN,

Attorneys for Petitioner.

Morton L. Barker, being sworn by me, [120] the undersigned officer, says on oath that Harry B. Riley is the Controller of the State of California, and, as such Controller, is vested under the laws of said state with the duty of enforcing the inheritance tax laws; that affiant is authorized to make this affidavit; and that the statements contained in the foregoing petition are true.

/s/ MORTON L. BARKER.

Sworn to and subscribed before me, this the 14th day of January, 1946.

[Seal] /s/ ELNORA STANTON,

Notary Public. [121]

Exhibit No. 3—(Continued)

9-A.

On February 2, 1946, the following defenses were filed to said petition of the State of California and its Controller by the persons therein named, being in words and figures following:

(Caption and Style Omitted.)

Defenses of Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, Addressed to "Petition for Revocation of Probate and for Ancillary Probate of Will of Olof Zetterlund" Filed by the State of California by and Through Its Controller, Harry B. Riley

Now come Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, jointly and severally, and for defenses to the Petition of the State of California by and through its Controller for revocation of probate, thereupon say:

(1) They admit that Olof Zetterlund died on August 21, 1945. They deny that Olof Zetterlund at the time of his death was a resident and citizen of the State of California. They allege that Olof Zetterlund at the time of his death was a citizen of and domiciled in the State of Florida.

(2) They admit that Olof Zetterlund executed his Last Will and Testament on June 9, 1937, which Last Will and Testament was duly admitted to probate in this Court by order made and entered on September 6, 1945, in pursuance to law. They

## Exhibit No. 3—(Continued)

deny that Olof Zetterlund made a codicil to his original will on August 3, 1945. [122] They say that the purported codicil, bearing date August 3, 1945, is null and void for that:

(a) The signature of Olof Zetterlund appearing on the purported codicil bearing date August 3, 1945, is spurious and not genuine.

(b) That at the time of the making of said codicil, on August 3, 1945, the said Olof Zetterlund was not of sound mind and did not possess testamentary capacity.

(c) The said purported codicil, bearing date August 3, 1945, was procured by Dora Miller and Harold M. Davidson through fraud, or duress, or mistake, or menace, or undue influence.

(3) The said Dora Miller and Harold M. Davidson are not related to Olof Zetterlund, deceased, within the third degree or any other degree.

(4) The persons, on whose behalf this pleading is filed, now interpose their Motion to Strike the Petition of the State of California by and through its Controller, Harry B. Riley, for revocation of probate, for that:

(a) The State of California by and through its Controller is neither a legatee, devisee, heir-at-law or beneficiary and hence is not entitled as a matter of law to institute such proceedings.

(b) The conditions and steps prescribed by the 1933 Probate Act for revocation of probate have not been had and taken.

Exhibit No. 3—(Continued)

(c) There is no provision in the 1933 Probate Act authorizing the filing of such petition. [123]

(5) The persons, on whose behalf these pleadings are filed, move to quash the "Notice of Taking Depositions de bene esse" given on behalf of the State of California and Harry B. Riley, Controller, Dora Miller and Harold M. Davidson, jointly, for that:

(a) No depositions can be taken on the Petition of the State of California and its Controller, Harry B. Riley, until said Petition has been put at issue.

(b) The said Petition for revocation of probate requires citation to all interested persons, which citation has not been given and, hence, said notice of taking depositions has not been given to all interested persons.

McCUNE, HIAASEN &  
FLEMING,

/s/ C. A. HIAASEN,

Attorneys for Samuel Nelson, Constance Nelson  
Ericson and Arvid Ericson.

State of Florida,  
County of Broward.

Before me the undersigned authority personally appeared C. A. Hiaasen, who being first duly sworn, deposes and says that he is of counsel for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, named in the foregoing defenses;



## Exhibit No. 3—(Continued)

that on January 31, 1946, he did mail a copy of the foregoing defenses to

Messrs. Redfearn & Ferrell, Attorneys for the State of California and its Controller, Harry B. Riley, Shoreland Building, Miami, Florida;

that on January 31, 1946, he did mail a copy of the foregoing defenses to [124]

Mr. John C. Sullivan, Attorney for Dora Miller and Harold M. Davidson, Ingraham Building, Miami, Florida.

/s/ C. A. HIAASEN.

Subscribed and sworn to before me this 31st day of January, 1946.

[Seal]     /s/ HELEN WOODRUFF,  
Notary Public, State of  
Florida at Large.

My commission expires February 13, 1946. [125]

## 9-B.

On February 28, 1946, the State of Florida by and through its Comptroller, filed its answer to petition for revocation of probate and for ancillary probate of will of Olof Zetterlund, being in words and figures following:

(Caption and Style Omitted.)



Exhibit No. 3—(Continued)

Answer to Petition for Revocation of Probate and  
for Ancillary Probate of Will of Olof Zetter-  
lund

The State of Florida, by and through its Comptroller, J. M. Lee, as Commissioner of Revenue, answers the petition for revocation of probate and for ancillary probate of will of Olof Zetterlund heretofore filed by the State of California, by and through its Comptroller, Harry B. Riley, and respectfully says:

1.

That the State of Florida admits that Olof Zetterlund died on August 21, 1945, but denies that at the time of his death he was a resident or citizen of the State of California.

2.

That said deceased was, at the time of his death and for a long time prior thereto a resident of the State of Florida.

Wherefore, it is respectfully prayed that said petition of the State of California be denied.

/s/ LEWIS H. TRIBBLE,

Attorney for J. M. Lee,

Commissioner of Revenue.

## Exhibit No. 3—(Continued)

## 9-C.

On April 13, 1946, Karin Zetterlund filed her answer to petition for revocation of probate and for ancillary probate of will of Olof Zetterlund, deceased, being in words and figures following:

(Caption and Style Omitted.)

Answer to Petition for Revocation of Probate and  
for Ancillary Probate of Will of Olof Zetter-  
lund, Deceased

Comes Now, Karin Zetterlund, by and through her undersigned attorneys, and Enfrid Rensta (also known as Fred Rensta) by and through his undersigned attorney, and file this their answer to the petition of the State of California and say:

## 1.

In answer to paragraph 1 of said petition, they admit that Olof Zetterlund died on August 21st, 1945, but deny that he was a citizen of the State of California.

## 2.

In answer to paragraph 2 of said petition, they admit that the deceased did reside in the State of Florida and did execute his Last Will and Testament on June 9, 1937, in Miami, Dade County, Florida, but deny that he removed to the State of California immediately thereafter. As to the execution of the Codicil to the original will in which Codicil he declared himself a resident of the State of California, the respondents have no knowledge of proceedings had in California. [127]

## Exhibit No. 3—(Continued)

## 3.

In answer to paragraph 3 of said petition, they admit that James Q. Burdet, who is not related to the deceased, had possession of the original Will and did on September 6, 1945, file same, together with a petition with the Honorable W. F. Blanton, Judge of the Probate Court, and that the said Judge did admit the Will to probate and he did, then and there, appoint the said James Q. Burdet as Curator but did not appoint a personal representative other than said Curator, and held in abeyance the question as to the deceased being a citizen or resident of the State of Florida until further order of that Court.

## 4.

In answer to paragraph 4 of said petition, they admit that probate in Dade County, Florida, was entered without notice to the petitioners or to anyone else. In further answer to paragraph 4, respondents are without knowledge, and demand strict proof thereof.

RASCO & ESSLINGER,

By /s/ GLYNN O. RASCO,  
Counsel for Enfrid Rensta and Associate Counsel  
for Karin Zetterlund.

/s/ ERNEST A. EKLUND,  
Counsel for Karin Zetterlund.

## Exhibit No. 3—(Continued)

## 11.

Thereupon, after due consideration of said issues thus presented, the Honorable W. F. Blanton, Judge of said Court, on December 31, 1946, made and entered his judgment, order and decree, recorded in Record of Probate Orders, Book 140, page 228, being in words and figures as follows:

(Caption and Style Omitted.)

Order Denying Petition of the State of California,  
et al., and Finding that Decedent Was a  
Florida Resident at Time of His Death

This cause coming on to be heard upon the Petition of the State of California by and through its Comptroller, Harry B. Riley, for an Order revoking and setting aside that certain Order dated September 6, 1945, and recorded in Book of Wills 122 at page 32 in the Office of the County Judge in and for Dade County, Florida, which said Order admitted to probate the Will of Olof Zetterlund, deceased, dated June 9, 1937.

And Also upon the Petition of Dora Miller and Harold M. Davidson also praying that said Will be revoked, and each of said Petitions further praying that this Court declare the said Olof Zetterlund, deceased, to have been a resident of the State of California at the time of his death, and that this Court admit an exemplified copy of the Last Will and Testament and a Codicil thereto of said Olof

## Exhibit No. 3—(Continued)

Zetterlund for Probate and Ancillary Proceedings in this Court, and that the [131] Petitioners Dora Miller and Harold M. Davidson be appointed Ancillary Executors of said Last Will and Testament and Codicil, or if said persons were disqualified to act as such, that the Court appoint some other suitable persons as such.

And the Court having considered said Petitions and the answer and amended answer filed by the State of Florida through its Comptroller J. M. Lee, and the motion and amended motion of the State of Florida to dismiss the said Petition filed by Dora Miller and Harold M. Davidson, and the Court having also considered each and all of the answers filed by various heirs of said Olof Zetterlund and of the legatees of Olof Zetterlund, deceased, under his said Will, and the Court having heard the testimony submitted by the parties to said proceeding, and having examined and considered all of the Exhibits introduced by the respective parties, and having carefully considered the Petitions filed, and each and every of the Answers filed, the testimony, the evidence and exhibits, and after due consideration thereof, finds that the said Olof Zetterlund, deceased, was at the time of his death, on, to wit, the 21st day of August, 1945, a resident and citizen of the State of Florida and the County of Dade, and that his said Last Will and Testament was rightfully and lawfully admitted to probate in Dade County, Florida, on September 6, 1945, as heretofore ordered.



## Exhibit No. 3—(Continued)

It is Therefore, Ordered, Adjudged and Decreed that the said Petition of the State of California by and through its Comptroller Harry B. Riley, and the said Petition of Dora Miller and Harold M. Davidson, [132] and each and every the prayers thereof, be and the same are hereby denied, and that the said Will of Olof Zetterlund, deceased, heretofore admitted to probate in this Court remain in the records thereof, and that the probate proceedings thereon continue and proceed as an original and domiciliary administration and proceeding in this State and County.

It Is Further Ordered That the Motion and Amended Motion of the State of Florida by and through its Comptroller, J. M. Lee, to dismiss the Petition of Dora Miller and Harold M. Davidson for Revocation of Probate be denied, by reason of the foregoing findings and Order on the facts.

Done and Ordered at Miami, Dade County, Florida, this 31st day of December, A.D. 1946.

[Seal]      /s/ W. F. BLANTON,  
County Judge. [133]

12.

Thereupon, after due notice (see Item 6-B, page 34 hereof) the cause was heard on January 17, 1947, at which time the Honorable W. F. Blanton, Judge of said Court, made and entered an order appointing executor and designating depository,



Exhibit No. 3—(Continued)

recorded January 17, 1947, in Probate Orders, Book 141, page 22, the same being in words and figures following:

(Caption and Style Omitted.)

Order Appointing Executor and Designating  
Depository

After due notice this cause was this day heard upon petitions and matters hereinafter specifically determined and adjudicated, and the Court having considered the same, thereupon, it is

Ordered, Considered and Determined, as follows:

1. The petition of Karin Zetterlund filed October 2, 1945, as amended on November 14, 1945, and on November 26, 1945, and each and every prayer thereof, be and the same is hereby denied. The several motions interposed by "interested persons" addressed to said petition of Karin Zetterlund, as amended, be and the same are hereby sustained.

2. It having been made manifest to the Court that Arvid Ericson, named as one of the co-executors in the Last Will and Testament of Olof Zetterlund, deceased, bearing date June 9, 1937, admitted to probate on September 6, 1945, died on September 6, 1946, and that the remaining and surviving person named in said Last Will [134] and Testament as Co-executor is qualified to act as executor. Therefore, the petition of Samuel Nelson, et al., filed on September 25, 1945, be and the same is hereby

## Exhibit 3—(Continued)

granted as to Prayers (b), (c) and (d) thereof, and denied as to Prayer (a) thereof.

3. The said Samuel Nelson has this day filed in this cause his written election to avail himself of the benefits of Chapter 21980, General Acts of 1943 (Section 69.15, F.S.A., Pocket Edition), and has designated the Broward National Bank of Fort Lauderdale, Florida, a banking corporation with trust powers, organized and existing under the laws of the United States, with its principal place of business in Fort Lauderdale, Florida, as his choice of depository. Now, therefore, the Broward National Bank of Fort Lauderdale, Florida, be, and the same is hereby, designated and appointed to serve, until further order of this Court, as depository for this estate, pursuant to Chapter 21980, General Acts of 1943 (Section 69.15, F.S.A., Pocket Edition), the compensation of said depository to be determined by this Court.

4. Now, in conformity with Section 732.50, F.S.A., it is further ordered and adjudged that Samuel Nelson be, and he is hereby, appointed and constituted the sole executor of the estate of Olof Zetterlund, deceased, and that, upon the taking of the oath prescribed by law, the filing of a designation of resident agent as required by law, and the giving of a bond to be approved by the undersigned in the sum of Ten Thousand.....Dollars, letters testamentary on [135] the aforesaid estate be granted unto the said Samuel Nelson.

## Exhibit 3—(Continued)

6. Upon the issuance of letters testamentary, as aforesaid, James Q. Burdet, heretofore appointed Curator, shall forthwith deliver to the said Broward National Bank of Fort Lauderdale, Florida, as depository of said estate, all monies, funds, bank deposits and intangible personal property of Olof Zetterlund, deceased. There is comprehended and embraced within the provisions of this paragraph all bank deposits of whatsoever kind of Olof Zetterlund, deceased, in bank and trust companies of whatsoever kind and wherever situated, including foreign countries, as well as the corporate stock of Olof Zetterlund, deceased, in the Halland Land Company and Elsinore Beach Corporation, together with all other intangible personal property or muniments of title thereof, which are transferable or assignable by endorsement and delivery, together with all papers and documents having an intrinsic value in themselves. In the event the Curator has not actually taken possession of the funds of Olof Zetterlund, deceased, deposited in banks or other financial institutions outside the State of Florida, he shall, in lieu of such funds on deposit, deliver to said depository all pass books, records and indicia of ownership of such bank deposits and all exchange of correspondence he may have relating thereto, all to the end that the said depository may obtain actual possession thereof. The said depository is hereby authorized to do all things [136] necessary to be done in order to cause to be transferred to it

**Exhibit 3—(Continued)**

all such deposits and accounts. All banks or other financial institutions be, and they are hereby, authorized and directed to deliver to said depository, upon delivery of a certified copy of this order, all funds, monies, and things of value in their custody, control or possession, belonging to Olof Zetterlund, now deceased. All other assets of Olof Zetterlund, deceased, shall be forthwith delivered by James Q. Burdet, Curator, to Samuel Nelson, Executor of said estate. The said depository and the said executor shall file in this cause a receipt of said assets, duly executed by each of them, and shall deliver an executed copy thereof to the said James Q. Burdet, Curator. The said James Q. Burdet, as Curator, shall forthwith file in this cause an inventory of all the assets of Olof Zetterlund, deceased, together with a complete accounting as Curator from the date of his appointment until the date of his delivery of the aforesaid assets, together with a complete statement of all receipts and disbursements as Curator. The matter of the compensation of James Q. Burdet as Curator and the compensation of his attorney is reserved for further adjudication.

7. Upon the issuance of letters testamentary to Samuel Nelson, as aforesaid, James Q. Burdet, the Curator, shall forthwith deliver to Samuel Nelson all records, documents, contracts, correspondence, books of account, bank statements, bank deposit books, cancelled checks, and audits of Olof

## Exhibit No. 3—(Continued)

Zetterlund, now deceased, and relating to his affairs, [137] as well as all other records and papers of whatsoever kind coming into his possession, control or custody as Curator of the Estate of Olof Zetterlund, deceased; receipts therefor shall be given, and duplicates thereof filed in this Court.

8. The said Samuel Nelson is hereby authorized to withdraw from the funds and monies thus delivered to said depository the sum of \$5,000.00 and to deposit or redeposit the same in said Broward National Bank of Fort Lauderdale, Florida, as a checking account of the said executor. Said account shall be known as the Executor's checking account, and the same shall be used by said executor for legitimate purposes in the administration of said estate. Funds in said checking account may be withdrawn by the executor by checks signed by him. The said executor shall keep accurate books of account showing all disbursements of said checking account and purpose therefor.

Done and Ordered in Miami, Florida, this 17th day of January, 1947.

[Seal]     /s/ W. F. BLANTON,  
County Judge. [138]

18.

Thereupon, on January 20, 1947, Letters Testamentary issued to Samuel Nelson as the sole domiciliary Executor of the Estate of Olof Zetterlund,



## Exhibit No. 3—(Continued)

deceased, recorded in Book of Wills No. 137, page 223, the same being in words and figures following:

(Caption and Style Omitted.)

## Letters Testamentary

To All Whom These Presents Shall Come, Greeting:

Whereas, Olof Zetterlund, late of the County aforesaid, died on the 21st day of August, A.D. 1945, leaving his Last Will and Testament, which having been satisfactorily proven, was on the 6th day of September, A.D. 1945, duly admitted to probate and record in this Court. And as by said Last Will and Testament, it appears that Samuel Nelson was named therein as Executor thereof and he having prayed the Court to grant Letters Testamentary thereon to Samuel Nelson as such Executor and having, in due form of law, taken the prescribed oath, and performed all other acts necessary to his legal qualifications as such Executor.

Now, therefore, know ye, That I, W. F. Blanton County Judge in and for the County aforesaid, by virtue of the power and authority by law in me vested, do hereby declare the said Samuel Nelson duly qualified by the laws of said State to act as Executor of said Last Will and Testament with full power, by the provisions of law and by virtue of these presents, to administer all and [145] singular the goods, chattels, rights and credits, lands,



## Exhibit No. 3—(Continued)

tenements and hereditaments of said Olof Zetterlund and to ask, demand, sue for, recover and receive the same; to pay the debts in which the said Olof Zetterlund stood bound, so far as the assets shall extend and the law direct, and duly entitled to have and hold for the purposes directed in and by the said Last Will and Testament, all the estate of said Olof Zetterlund during the legal continuance of his administration, until the same shall expire by virtue of the provisions of said Last Will and Testament, or until the power and authority hereby granted shall be duly revoked according to law.

In Testimony Whereof, I hereunto set my hand and affix the seal of the County Judge's Court of the County aforesaid, at Miami, Florida, this 20th day of January, A.D. 1947.

[Seal]      /s/ W. F. BLANTON.

County Judge. [146]

\* \* \*

20.

On January 28, 1947, Dora Miller and Harold M. Davidson, and the State of California, by and through its Controller, Thomas H. Kuchel, filed their notice of appeal to the Circuit Court of Dade County, Florida, with assignments of error and directions as to the record, all of which were recorded in Probate Orders, Book 141, page 161, the same being in words and figures following:

(Caption and Style Omitted.)

## Exhibit No. 3—(Continued)

## Notice of Appeal to Circuit Court, Assignments of Errors, and Directions as to Record

Now come Dora Miller and Harold M. Davidson, and the state of California, by and through its Controller, Thomas H. Kuchel, parties in the above-stated case, and, as appellants, enter this appeal to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, from the order of Hon. W. F. Blanton, County Judge, denying the petition of the state of California and the petition of Dora Miller and Harold M. Davidson, both petitions seeking the relief therein prayed for, including the revocation of the probate of the Will of Olof Zetterlund, and ordering that the probate proceedings continue in Dade County, Florida. Said order was entered on December 31, 1946, and this appeal is taken on January 28, 1947. [148]

## Assignments of Error

Appellants assign as the errors upon which they intend to rely for the reversal of said order of the county judge the following:

(1) The Hon. W. F. Blanton, County Judge, erred in entering said order of December 31, 1946.

(2) The said county judge erred in entering said order denying the petition of the State of California, by and through its controller, seeking revocation of the probate of the will of said deceased in Dade County, Florida, and seeking the probate of said will and the codicil thereto in ancillary pro-

Exhibit No. 3—(Continued)

ceedings in Dade County, Florida, and declaring the residence and citizenship of the said Olof Zetterlund at the time of his death to have been in the State of California.

(3) Said county judge erred in entering said order denying the petition of Dora Miller and Harold M. Davidson seeking revocation of the probate of the will of said deceased in Dade County, Florida, and seeking the probate of said will and the codicil thereto in ancillary proceedings in Dade County, Florida, and declaring the residence and citizenship of the said Olof Zetterlund at the time of his death to have been in the State of California, and also seeking to have the said Dora Miller and Harold M. Davidson appointed as ancillary executors in Dade County, Florida.

Directions as to Record

The county judge is directed and requested to transmit to the Circuit Court of the Eleventh Judicial [149] Circuit in and for Dade County, Florida, the original probate file in this case, including all pleadings in this case and the original transcript of testimony taken at all the hearings, together with all exhibits introduced in evidence. Said county judge is requested to transmit said record at once.

This 28th day of January, 1947.

/s/JOHN C. SULLIVAN,

Attorney for Dora Miller and  
Harold M. Davidson.

## Exhibit No. 3—(Continued)

REDFEARN &amp; FERRELL,

By /s/ D. H. REDFEARN,  
Attorneys for State of  
California.

State of Florida,  
County of Dade.

Before me, the undersigned authority, personally appeared Eileen E. Graham, being first duly sworn, who deposes and says that she is employed in the office of Redfearn & Ferrell, attorneys for the state of California, and that, on the 28th day of January, 1947, she served a true and complete copy of the notice of appeal to the circuit court, assignments of error, and directions as to the record on the following, by mailing to each of them a true copy thereof, enclosed in an envelope bearing the requisite amount of United States uncanceled postage stamps, addressed as follows: [150]

McCune, Hiaasen, Fleming & Kelly, Attorneys at Law, Broward Bank Building, Fort Lauderdale, Florida.

Hon. Lewis H. Tribble, Legal Department, Comptroller's Office, Tallahassee, Florida.

Rasco & Esslinger, Attorneys at Law, 835 Lincoln Road, Miami Beach, Florida.

/s/ EILEEN E. GRAHAM.

Exhibit No. 3—(Continued)

Subscribed and sworn to before me, this 28th day of January, 1947.

[Seal]     /s/ ZEON DOMEK,  
Notary Public, State of  
Florida at Large.

My Commission Expires Oct. 31, 1950. [151]

\* \* \*

21-B.

Thereupon, at a hearing had on February 26, 1947, the Honorable W. F. Blanton, Judge of said Court, made and entered an order requiring Dora Miller and Harold M. Davidson to deliver assets, recorded February 26, 1947, in Probate Orders, Book 142, page 86, the same being in words and figures following:

(Caption and Style Omitted.)

Order Requiring Dora Miller and Harold M.  
Davidson to Deliver Assets

After due notice this case was heard on February 26, 1947, upon the petition of Samuel Nelson, as executor, for an order requiring and directing Dora Miller and Harold M. Davidson to deliver to him intangible personal property in their possession owned by Olof Zetterlund, now deceased, at the time of his death, and the Court having considered said petition and the record and proceedings in this case, doth find:

On October 2, 1945, Dora Miller and Harold M.



## Exhibit No. 3—(Continued)

Davidson submitted themselves to the jurisdiction of this Court by filing their joint "Petition for Revocation of Probate." In said petition, the said Dora Miller and Harold M. Davidson designated J. C. Sullivan, Attorney at Law of Miami, Florida, as their attorney of record in this cause. Said petition progressed to trial before this Court, beginning June 10, 1946, and continuing thereafter on June 11 and 14 and October 4, 1946. At said trial Dora Miller and Harold M. Davidson [164] were present in person on June 10 and 11, 1946. Said trial resulted in a decision rendered by this Court on December 31, 1946, denying said petition of Dora Miller and Harold M. Davidson, and adjudicating that Olof Zetterlund was domiciled in the State of Florida and not in California at the time of his death, and that domiciliary administration proceedings of the Estate of Olof Zetterlund should be had in Dade County, Florida, and not in Los Angeles County, California. Thereafter, on the 28th day of January, 1947, Dora Miller and Harold M. Davidson by and through their attorney, John C. Sullivan, sued out their appeal from said order rendered on December 31, 1946, which appeal is still pending. Thus it is that said Dora Miller and Harold M. Davidson, ever since October 2, 1945, have been and still are personally amenable to the jurisdiction of this Court, and that therefore this Court has the power and jurisdiction to grant the executor's petition filed February 19, 1947. It is thereupon,

Ordered, Adjudged and Considered that Dora



Exhibit No. 3—(Continued)

Miller and Harold M. Davidson be, and they are hereby, required, commanded and directed to forthwith deliver and pay, without delay, to Samuel Nelson, as Executor of the Estate of Olof Zetterlund:

(a) The sum of \$1054.53, constituting the proceeds of the bank account of Olof Zetterlund with The Greenwich Savings Bank, New York, New York, illegally and wrongfully withdrawn by Dora Miller and Harold M. Davidson on May 20, 1946, together with interest from the date of said withdrawal.

(b) The sum of \$1231.97, constituting the proceeds of the bank account of Olof Zetterlund with The Excelsior Savings [165] Bank, New York, New York, illegally and wrongfully withdrawn by Dora Miller and Harold M. Davidson on May 18, 1946, together with interest from the date of said withdrawal.

(c) The sum of \$1178.41, constituting the proceeds of the bank account of Olof Zetterlund with the East River Savings Bank, New York, New York, illegally and wrongfully withdrawn by Dora Miller and Harold M. Davidson on May 7, 1946, together with interest from the date of said withdrawal.

(d) The sum of \$2153.79, constituting the amount on deposit as of August 21, 1945, in the account of Olof Zetterlund with The Bowery Savings Bank, New York, New York, together with interest thereon from said date, illegally

## Exhibit No. 3—(Continued)

and wrongfully withdrawn by Dora Miller and Harold M. Davidson on May 18, 1946.

(e) The passbook and other evidence of title to the account of Olof Zetterlund in the Dry Dock Savings Institution, Uptown Branch, New York, New York, in the amount of \$1320.85.

(f) The passbook and other evidence of title to the account of Olof Zetterlund in the Bank of America, Alhambra Branch, Alhambra, California; together with all funds withdrawn therefrom since August 20, 1945.

(g) The passbooks and other evidences of title to the account of Olof Zetterlund in each of the following banks: (Together with all funds withdrawn therefrom since August 20, 1945).

Aktiebolaget Svenska Handelsbanken,  
Sweden;

Skandinaviska Banken Aktiebolag, Stockholm, Sweden.

(h) A certain mortgage note wherein Regina J. Anderson is the maker and Olof Zetterlund is the payee, bearing date August 1, 1937, in the principal amount of \$1500.00, together with the mortgage deed securing the same, encumbering Lots 7 and 8, Tract 9354, as shown by map recorded in Book 126, pages 27 and 28, of the public records of Los Angeles County, California, further described as 10320 Woodbridge Street, North Hollywood, California,

## Exhibit No. 3—(Continued)

together with all interest accruing thereon. In the [166] event that the said Dora Miller and Harold M. Davidson have collected the principal and interest on said mortgage security, they shall forthwith pay to the executor all proceeds thereof, together with interest thereon from the date of their receipt thereof.

(i) The sum of \$619.43, listed as a deferred asset of Olof Zetterlund, Deceased, and particularly described as "Accrued interest receivable," in the Financial Statement lodged in this Court on March 19, 1946.

(j) The sum of \$15,400.00, listed as a deferred asset of Olof Zetterlund, Deceased, and particularly described as "Cash remitted to and withdrawn by Dora Miller," in the Financial Statement lodged in this Court on March 19, 1946.

(k) All jewelry, papers, records, personal effects and other things of value belonging to Olof Zetterlund at the time of his death and in the possession of Dora Miller and Harold M. Davidson.

This order shall be effective upon the service of a copy hereof upon John C. Sullivan, Miami, Florida, attorney of record for Dora Miller and Harold M. Davidson.

The Court reserves jurisdiction of this subject matter for the purpose of entering such further orders and writs as may be necessary to carry into effect this order.

## Exhibit No. 3—(Continued)

Done and Ordered in Miami, Florida, this 26th day of February, 1947.

[Seal]      /s/ W. F. BLANTON,  
County Judge. [167]

\* \* \*

## 22.

On May 28, 1947, the decision of the Circuit Court, being Civil Appeal No. 590, was filed with the Clerk of the Circuit Court of Dade County, recorded on June 13, 1947, in Chancery Order Book 823, page 316, the same being in words and figures following:

In the Circuit Court of the Eleventh Judicial  
Circuit of Florida, in and for Dade County

Civil Appeal No. 590-1

In Re: Estate of  
OLOF ZETTERLUND, Deceased.

REDFEARN & FERRELL,

Miami, Florida,

Attorneys for State of California.

McCUNE, HIAASEN, FLEMING & KELLEY,

Fort Lauderdale, Florida,

Attorneys for Samuel Nelson and Other  
Interested Persons.

Exhibit No. 3—(Continued)

JOHN C. SULLIVAN, ESQ.,

Miami, Florida,

Attorney for Appellants, Dora Miller and  
Harold M. Davidson.

RASCO & ESSLINGER,

Miami Beach, Florida,

Attorneys for James Q. Burdet, Curator.

On Appeal From County Judge's Court, Dade  
County, Florida

\* \* \*

On consideration of the record and briefs, and with the benefit of full argument by counsel for the [170] respective parties, this Court is of the opinion that the Order of the County Judge dated December 31, 1946, recorded in Probate Order Book 140, page 228, in the office of the County Judge, should be and it hereby is affirmed.

The decedent's long and firmly established domicile in Florida, if it was to be relinquished, afforded a wealth of opportunities for actions defining that intent, and the absence of any such definite actions on the part of the decedent is controlling. The casual oral declarations and the indirect recitals of intention to remain away, relied on to establish a change of domicile to California, made by this man who was absent for his health, and after he had become incapacitated physically and was in the process of becoming incapacitated mentally,

## Exhibit No. 3—(Continued)

were lacking in quality as evidence, and were unconvincing and ineffective to create a new domicile of choice, under the circumstances presented by this record.

It is so ordered.

/s/ GEORGE E. HOLT,  
Circuit Judge.

/s/ STANLEY MILLEDGE,  
Circuit Judge.

/s/ CHARLES A. CARROLL,  
Circuit Judge.

\* \* \*

[Endorsed]: Filed August 26, 1947. [171]

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[Title of District Court and Cause.]

ANSWER OF DORA MILLER AND HAROLD  
M. DAVIDSON, INDIVIDUALLY, AND AS  
CO-EXECUTORS OF THE LAST WILL  
AND TESTAMENT AND CODICIL OF  
OLOF ZETTERLUND, DECEASED

Comes now defendants, Dora Miller and Harold M. Davidson, as individuals and as co-executors of the Last Will and Testament and Codicil of Olof Zetterlund, deceased, and admit, deny and allege as follows:

I.

Admit that Olof Zetterlund died testate in the County of Los Angeles, State of California, on



August 21, 1945, and deny that at the time of his death Olof Zetterlund was a resident [182] and citizen of, or domiciled in Dade County, Florida, but allege the fact to be that Olof Zetterlund was, at the time of his death, and for a long time prior thereto, a resident of the County of Los Angeles, State of California, and that he was a citizen and domiciled in the County of Los Angeles, State of California, and that the residence, citizenship and domicile was adjudicated by the Superior Court of the State of California, in and for the County of Los Angeles, at the time of the death of Olof Zetterlund to be the County of Los Angeles, State of California, and deny that the County Judge's Court in and for the County of Dade, State of Florida, was a constitutional court having exclusive jurisdiction, or any jurisdiction at all, over the administration of the estate of said decedent, and that said court has never adjudicated, or determined the force and effect of a Codicil to the Last Will and Testament of Olof Zetterlund, but that the force and effect of the Codicil to the Last Will and Testament of Olof Zetterlund was adjudicated and determined by the Superior Court of the State of California, in and for the County of Los Angeles.

Admit that the County Judge's Court of Dade County, Florida, rendered a judgment adjudicating that Olof Zetterlund was domiciled in the County of Dade, State of Florida, at the time of his death, but that said decision has not become final and is now on appeal, and that said judgment does not remain in full force or effect, and that the said

court does not now have, or did have original jurisdiction in said matter.

## II.

Deny that at all times subsequent to October 2, 1945, each of the defendants was personally amenable, or subject to the jurisdiction of the County Judge's Court in and for Dade County, State of Florida, but allege that they did appear for the purpose of submitting the Codicil to the Last Will and Testament of [183] Olof Zetterlund, for probate and for ancillary proceedings based on the California Court's adjudication, objecting to the probate of the Last Will and Testament, as an original proceeding in Florida, and for those purposes only, and that the said Court refused to admit the Codicil to the Last Will and Testament of Olof Zetterlund to probate, although the Court of proper jurisdiction, to wit: The Superior Court of the State of California, in and for the County of Los Angeles, had admitted said Codicil to probate and adjudicated, prior to the hearing in said court in Florida, that said Codicil was properly executed and was the last will and testament of Olof Zetterlund; that there is a conflict existing between said court in California and said court in Florida.

That these defendants deny that the judgment of the Florida Court is a final judgment.

## III.

Deny that the judgment of the Florida Court referred to in Paragraphs 4, 5 and 6 of plaintiff's first claim is one to which this Court, or the Courts

of California, must give full faith or credit under the provisions of Section 1, Article IV, of the Constitution of the United States, and allege that all intangible and tangible personal property of Olof Letterlund, deceased, is subject to the jurisdiction of the State of California Superior Court, in and for the County of Los Angeles, and that the County Judge's Court in and for Dade County, Florida, has no jurisdiction whatsoever over any tangible or intangible personal property of said Olof Zetterlund, deceased. Denies generally and specifically each and every other allegation of paragraphs 4, 5, and 6.

Wherefore, defendants pray that the judgment of February 26, 1947, be adjudicated by this Court to be of no force and effect and unenforceable, and that it be denied a judgment of this Court, and that the Court adjudicate and adjudge that the Superior Court of the State of California, in and for the County of Los [184] Angeles, has the sole jurisdiction of tangible and intangible personal property of Olof Zetterlund, deceased, and that the defendants be given judgment with costs, and for such other and further relief as may be proper.

And in Answer to Plaintiff's Second Claim, defendants admit, deny and allege as follows:

### I.

Deny that at the time of his death, Olof Zetterlund was a resident, or citizen of the State of Florida, but allege that said Olof Zetterlund was

at the time of his death, and for a long time prior thereto, a resident and citizen of the State of California, and was domiciled and a resident of the County of Los Angeles, California.

## II.

Deny that Dora Miller completely, or at all, dominated or controlled the activities of Olof Zetterlund; deny that during the fall of 1941, or at any other time, or at all, or when Olof Zetterlund was infirm, or ill, or senile, or aged, or physically or mentally incapacitated, defendant Dora Miller persuaded Olof Zetterlund to go to the State of California for a short visit on account of his health, but allege the fact to be that in the fall of 1941 Olof Zetterlund was of sound mind and memory and that he decided to go to California of his own will and volition for his health and that he decided Florida was not a healthful state, but that California was a healthful state and that the climatic conditions in California were very superior to that of Florida for the health of Olof Zetterlund.

Admit that Olof Zetterlund and defendant Dora Miller arrived in California in the fall of 1941, but deny that the condition of Olof Zetterlund became progressively worse, but allege that his condition became generally better; and deny that he [185] lost his power of locomotion, or his power of speech, or his ability to write or read, and deny that in 1942, or at any other time, Dora Miller, through artifice, or any other means, or otherwise, gained complete, or exclusive possession, or control of the

funds, or bank accounts of Olof Zetterlund, but allege that she was employed by Olof Zetterlund as his secretary and assistant and did assist him in all of his business dealings.

Deny generally and specifically each and every allegation contained in Paragraph 4 of plaintiff's second claim and deny that there were any sums in excess of \$10,000.00 in any of the banks set forth therein, or states, and deny that any of the funds at all were dissipated by Dora Miller, but allege that any funds that were withdrawn, or used, were withdrawn and used for the benefit and use of Olof Zetterlund, and for no one else, and were withdrawn at his specific instance and request and demand, and that no funds were withdrawn by Dora Miller except upon the request of Olof Zetterlund.

### III.

Deny that during the latter part of 1943 Dora Miller, with the cooperation, or assistance, or advice of defendant, Harold M. Davidson, or any one else, or at all, undertook to acquire real or personal property in the name of Dora Miller, or with funds belonging to Olof Zetterlund, or the execution of any plan at all which Dora Miller caused to be procured, or delivered, or recorded a grant deed set forth in plaintiff's second claim, and marked Exhibit 4 of plaintiff's complaint, but allege the fact to be that Olof Zetterlund, for and in consideration of services rendered to Olof Zetterlund by Dora Miller, purchased and paid for said real property and that the money did come from Olof Zetter-



lund and was voluntarily and without coercion at all, given to Dora Miller for the purpose of permitting Olof Zetterlund to have a home during the remainder of his life and with the express understanding that it was her sole property and that Olof Zetterlund had no interest therein except the [186] right to use it during his lifetime.

Deny that Dora Miller elaborately furnished said dwelling, but allege that the furniture is common and ordinary furniture and furnishings and were furnished to Dora Miller by Olof Zetterlund at his own request.

#### IV.

Deny generally and specifically each and every allegation contained in Paragraph 6 of plaintiff's second claim and in this connection allege that any funds that were withdrawn from any bank at all were drawn at the request of Olof Zetterlund and at his special instance and request and for his use and benefit and not for the use or benefit of Dora Miller, except for the payment to her of wages.

#### V.

Deny generally and specifically each and every allegation contained in Paragraphs 7 and 8 of plaintiff's second claim and deny that Dora Miller wrongfully or illegally or fraudulently claims title, or ownership, to said property, or is now undertaking to sell, or dispose of the same, or appropriate the funds and proceeds thereof, and deny that the property was purchased for any sum in excess of \$13,000.00, and Dora Miller alleges that



said property is her sole property and that the plaintiffs, or the estate of Olof Zetterlund, have no interest in said real or personal property. That the real property and the personal property were each chosen personally by Olof Zetterlund and that, at his direction, the title was placed in the name of Dora Miller in consideration of her tender care and services to him, and for the purpose of providing her with security and for a place in which he might make his home during the remainder of his lifetime.

Wherefore, defendants pray that judgment be given to these defendants in said second claim and that plaintiff take nothing by his second claim at all, and that the Court adjudge and decree [187] that plaintiff has no right, title or interest whatsoever in and to the real property described in said second claim, and for such other and further relief as may be proper.

And in Answer to Plaintiff's Third Claim, defendants admit, deny and allege as follows:

### I.

Answering Paragraph 2, deny that at the time of his death, Olof Zetterlund was a resident or citizen of the state of Florida, but allege that at that time, he was a resident of, and domiciled in the state of California.

### II.

Answering Paragraph 3, deny that throughout the last years of the life of Olof Zetterlund defend-

ant Dora Miller completely dominated or controlled his activities, but allege that at all times Dora Miller explicitly followed the directions given her by Olof Zetterlund.

### III.

Deny generally and specifically each and every allegation contained in Paragraph 4 of plaintiff's second claim as incorporated in plaintiff's third claim and deny that accounts aggregating \$100,000.00, or any other sums at all, were dissipated by Dora Miller at any time, place, or in any manner whatsoever.

### IV.

Deny generally and specifically each and every allegation contained in Paragraph 5 of plaintiff's said third claim, and deny that any funds at all were at any time diverted to her own use or that she had any dominion or control over the affairs of Olof Zetterlund, but acted only under his direction, and in this connection, defendants allege that Harold M. Davidson did not know Olof Zetterlund, or Dora Miller, until he was called upon in the early part of 1944. [188]

Wherefore, defendants pray that plaintiff take nothing by his third claim and that they be given judgment with costs.

And in Answer to the Fourth Claim in plaintiff's complaint, defendants admit, deny and allege as follows:

### I.

Answering Paragraph 2, deny that at the time of

his death Olof Zetterlund was a resident or citizen of, or domiciled in Dade County, Florida, but allege the fact to be that he was a resident of, and domiciled in the County of Los Angeles, State of California, and that his estate is subject to the jurisdiction of the State of California and not of the State of Florida.

## II.

Answering Paragraph 3, deny generally and specifically each and every allegation contained in Paragraph 3 of plaintiff's first claim which was incorporated by reference in said fourth claim.

## III.

Deny generally and specifically each and every allegation contained in Paragraph 4 of plaintiff's fourth claim and specifically deny that the County Judge's Court in and for Dade County, Florida, had exclusive jurisdiction or any jurisdiction whatsoever over the estate of Olof Zetterlund, and allege that the said County Judge's Court refused to pass upon the purported Codicil, or recognize it at all and that said Court was prejudiced against the California Court and that said judgment set forth in Paragraph 4 of plaintiff's fourth claim in said complaint has not become final, and further allege that the Superior Court of the State of California, in and for the County of Los Angeles, has the sole and exclusive jurisdiction over all of the tangible and intangible property of Olof Zetterlund, deceased, and allege that all of the acts performed by these defendants were done with the express

authority of the Superior Court of the State of California, in and for the [189] County of Los Angeles, and that plaintiff has no right, or jurisdiction, to interfere with the orders of the said Superior Court of the State of California, and that the plaintiff is endeavoring to interfere with the orders of said Court of the State of California.

#### IV.

Answering Paragraph 5, admit that the defendants claim and hold themselves out to be co-executors of the Estate of Olof Zetterlund, deceased, and admit that they are exercising the powers of said office as conferred and granted to them by the Superior Court of the State of California, in and for the County of Los Angeles. Deny generally and specifically each and every allegation in said paragraph not herein specifically admitted. Deny that they have unlawfully, wrongfully or fraudulently appropriated to themselves a large amount of the funds belonging to the Estate of Olof Zetterlund in the sum of \$3,000.00 exclusive of interest and costs, or any other sum or at all, and allege that any sum taken into the hands of the defendants was as co-executors of the Estate of Olof Zetterlund, by and with the authority given them by the Superior Court of the State of California, in and for the County of Los Angeles.

Wherefore, defendants pray that plaintiff take nothing by his fourth cause of action and claim, and that the Court adjudicate and adjudge that he has no right or cause to interfere with the defend-

ants in the operation and management of the Estate of Olof Zetterlund, deceased, in the State of California, and concerning any tangible or intangible property of said decedent, and that it further adjudge that the plaintiff has only the right to exercise jurisdiction over real property that may exist in the State of Florida; for costs of suit; and for such further order as may be just and proper in the premises.

/s/ WILLIAM J. CLARK,

Attorney for Defendants. [190]

State of California,  
County of Los Angeles—ss.

Dora Miller and Harold M. Davidson, being by me first duly sworn, depose and say: That they are defendants in the foregoing and above-entitled action; that they have read the foregoing Answer and know the contents thereof; and that the same is true of their own knowledge, except as to the matters which are therein stated upon their information or belief, and as to those matters that they believe it to be true.

/s/ DORA MILLER,

/s/ HAROLD M. DAVIDSON.

Subscribed and sworn to before me this 30th day of September, 1947.

[Seal]      /s/ INEZ DEEMS,

Notary Public in and for  
Said County and State.

My Commission expires Feb. 1, 1949.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 1, 1947.

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[Exemplified copy of Opinion of Supreme Court of Florida affirming Judgment in lower court reported in 35 So. (2d) 288. Filed herein on June 23, 1948, and is not reprinted here.]



## MANDATE FROM SUPREME COURT

The State of Florida

To the Honorable the Judge of the Circuit Court  
for the Eleventh Judicial Circuit of Florida:

Greeting:

Whereas, Lately in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for the County of Dade, in a cause wherein

In Re: Estate of Olof Zetterlund, Deceased, Dora Miller and Harold M. Davidson, and the State of California, were Appellants, and Samuel Nelson, Executor of the Estate of Olof Zetterlund, Deceased, and other interested heirs, were Appellees, the Judgment of said Circuit Court was rendered May 29, 1947, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said Supreme Court holden at Tallahassee, A.D. 1948, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 30th day of April, A.D. 1948, it was considered by said Supreme Court that the said Judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the

Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed at the sum of ..... Dollars; therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Judgment of the Circuit Court notwithstanding.

Witness, The Honorable Elwyn Thomas, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 29th day of May, 1948.

GUYTE P. McCORD,  
Clerk, Supreme Court of  
Florida.

A True Copy.

Test:

GUYTE P. McCORD,  
Clerk, Supreme Court.

[Endorsed]: Filed June 23, 1948. [239]

In the District Court of the United States in  
and for the Southern District of California,  
Central Division

Civil No. 7545-HW

SAMUEL NELSON, Individually, and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, Suing on His Own Behalf and on  
Behalf of All Other Heirs, Devisees and Lega-  
tees of Olof Zetterlund, Deceased, Similarly  
Situated, etc.,

Plaintiff and Cross-Defendant,

vs.

DORA MILLER and HAROLD M. DAVIDSON,  
Both Individually and as Pretending Co-Execu-  
tors, or Co-Executors De Son Tort, of the  
Estate of Olof Zetterlund, Deceased,

Defendants and Cross-Complainants.

DORA MILLER and HAROLD M. DAVIDSON,  
Co-executors of the Estate of Olof Zetterlund,  
Deceased,

Cross-Complainants and  
Complainants in Interpleader,

vs.

STATE OF CALIFORNIA and THOMAS H.  
KUCHEL, as Controller of the State of Cali-  
fornia,

Defendants in Interpleader.

### JUDGMENT

The above-entitled matter came on regularly to  
be heard April 5th, 1951, before the above-entitled

Court, Honorable Harry C. Westover, District Judge, Presiding; the plaintiff and cross-defendant Samuel Nelson individually and as an heir, devisee and legatee of Olof Zetterlund, deceased, appearing by his attorney, Edward O'Connor, of the firm of O'Connor & O'Connor, and defendants and cross-complainants Dora Miller and Harold M. Davidson, both individually and as co-executors of the Estate of Olof Zetterlund, deceased, appearing in person and through counsel, William J. Clark, and the State of California, and Thomas H. Kuchel, as Controller of the State of California, appearing through its attorney, Morton L. Barker, and the cause having been submitted to the Court for decision, based upon certain facts admitted by the parties in the matter, and with the request that the Court determine whether or not it could render a judgment based upon the admitted facts, before taking any evidence beyond the question as to whether or not the Federal Court could adjudicate the rights or responsibilities of the two sets of Executors, one appointed in the Probate Court of the State of Florida, and one appointed by the Probate Court of the State of California, and the matter having been submitted to the Court for its decision, and the Court having signed and filed its Findings of Fact and Conclusions of Law, and plaintiff having in open Court requested its second cause of action be dismissed,

It Is Ordered, Adjudged and Decreed that plaintiff, Samuel Nelson, individually and on behalf of all other heirs, devisees and legatees of Olof Zetterlund, deceased, and as Executor of the Estate of

Olof Zetterlund, in the State of Florida, and as Trustee of an expressed trust, take nothing by his complaint, or in any of his causes of action, and that the defendants Dora Miller and Harold M. Davidson, individually and as co-executors of the Estate of Olof Zetterlund, deceased, in California, be [263] given judgment on plaintiff's first, third and fourth causes of action, and the second cause of action is dismissed.

It Is Further Ordered, Adjudged and Decreed that the cross-complainants take nothing by their cross-complaint and that this Court will not interfere with the probate proceedings and judgments of the Probate Courts of California or Florida or adjudicate the residence of Olof Zetterlund, at the time of his death.

Dated July 2, 1951.

/s/ HARRY C. WESTOVER,  
Judge.

Approved as to Form:

/s/ EDWARD J. O'CONNOR,  
Attorney for Plaintiff and  
Cross-Defendant.

/s/ WILLIAM J. CLARK,  
Attorney for Defendants  
and Cross-Complainants.

/s/ MORTON L. BARKER,  
Attorney for State of California and Thomas H.  
Kuchel, Defendants in Interpleader.

[Endorsed]: Filed July 3, 1951.

Entered July 3, 1951. [264]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF  
APPEALS UNDER RULE 73 (B)

Notice is hereby given that Samuel Nelson, individually, and as an heir, devisee and legatee of Olof Zetterlund, deceased, suing on his own behalf and on behalf of all other heirs, devisees and legatees of Olof Zetterlund, deceased, plaintiff and cross-defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment entered in this action on July 3, 1951.

O'CONNOR & O'CONNOR,

By /s/ EDWARD J. O'CONNOR,  
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 2, 1951. [265]



[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 271, inclusive, contain the original Complaint; Answer; Cross-Complaint; Exemplified Copy of Decision of Supreme Court of Florida, Miller and Davidson, et al., vs. Nelson, etc.; Opinion; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Designation of Record on Appeal and Motion for and Order Extending Time to Docket Appeal, which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21st day of September, A.D. 1951.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

[Endorsed]: No. 13110. United States Court of Appeals for the Ninth Circuit. Samuel Nelson, Individually and as an Heir, Devisee and Legatee of Olof Zetterlund, Deceased, Suing on His Own Behalf and on Behalf of All Other Heirs, Devisees and Legatees of Olof Zetterlund, Deceased, Similarly Situated, Appellant, vs. Dora Miller and Harold M. Davidson, Both Individually and as Pretending Co-Executors, or Co-Executors De Son Tort, of the Estate of Olof Zetterlund, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 24, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 13110

SAMUEL NELSON, Individually, and as an Heir,  
Devisee and Legatee of Olof Zetterlund, De-  
ceased, Suing on His Own Behalf and on  
Behalf of All Other Heirs, Devisees and Lega-  
tees of Olof Zetterlund, Deceased, Similarly  
Situated, etc.,

Appellant,

vs.

DORA MILLER and HAROLD M. DAVIDSON,  
Both Individually and as Pretending Co-Execu-  
tors, or Co-Executors De Son Tort, of the  
Estate of Olof Zetterlund, Deceased,

Appellees.

STATEMENT OF POINTS AND  
DESIGNATION OF RECORD

Comes Now the Appellant in the above-entitled case and files the following statement of points relied upon by the Appellant for reversal of the judgment entered in said cause by the United States District Court for the Southern District of California, Central Division, on the 3rd day of July, 1951, and designation of parts of the record which appellant thinks necessary for the consideration of said points.

Points relied upon for reversal of judgment:

1. That the Court erred in not giving full faith and credit to a judgment entered by the County Court Judge of Dade County, State of Florida, which judgment was affirmed by the Circuit Court of Appeals of the State of Florida, and which judgment was again affirmed by the Supreme Court of the State of Florida.

2. That the Court erred in refusing to enter a judgment directing the appellees to perform and satisfy each of the provisions of the judgment of the Florida Court.

\* \* \*

Dated this 6th day of November, 1951.

O'CONNOR & O'CONNOR,

By /s/ EDWARD J. O'CONNOR,  
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 7, 1951.